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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 19-CR-00286(AMD)

-against- : United States Courthouse

: Brooklyn, New York

: FRIDAY, September 24, 2021

ROBERT SYLVESTER KELLY, : 9:30 a.m.

Defendant. :

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TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE ANN M. DONNELLY
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by computerized stenography. Transcript
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Proceedings

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1 (In open court - jury not present.)

2 THE COURTROOM DEPUTY: All rise.

3 (Judge ANN M. DONNELLY entered the courtroom.)

4 THE COURT: Hi, everybody can sit down.

5 (Pause in the proceedings.)

6 (Defendant entered the courtroom.)

7 THE COURT: Are we ready to begin?

8 Anything before we start?

9 MS. SHIHATA: No, Your Honor.

10 THE COURT: All right.

11 MR. SCHOLAR: Yes, Your Honor.

12 Just a review of the Government's rebuttal
13 summation. It's on page 4552 of the transcript. There was
14 some argument about what Mr. Cannick was saying during his
15 summation, and then there was the line that stated:

16 What is that supposed to prove?

17 And just the repeated references to Mr. Cannick and
18 the defense case. We would argue that that's, again,
19 attempting to shift the burden with respect to the burden of
20 proof, and we would hope that the Court would give an
21 instruction with respect to that before we began.

22 THE COURT: Well, I don't understand it to be burden
23 shifting at all. I mean it is a rebuttal summation and so, by
24 definition, it is going to respond to the arguments in the
25 defense.

Proceedings

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1 And if I am remembering the comment correctly, it
2 was a comment on an inference that Mr. Cannick drew from the
3 evidence. It had nothing to do with the burden. I think it
4 might have been the turn of phrase, but there was no comment,
5 as far as I'm concerned, on the burden of proof.

6 And, in fact, I think in both summations, the
7 Government emphasized on a few occasions that the burden was
8 theirs and it was a burden that they welcomed.

9 So, I don't think there's any need to remind the
10 jury. Surely, it's in my final charge, so I am not going to
11 do anything about that now.

12 But it does remind me, I know Ms. Lawoyin sent the
13 charge to everybody, and I am assuming everybody has had a
14 chance to read it and doesn't have anything they want to add
15 or take out. Correct?

16 MS. SHIHATA: That's correct.

17 MR. SCHOLAR: That's correct, Judge.

18 THE COURT: Okay, great.

19 All right. Anything else?

20 MR. SCHOLAR: No, Judge.

21 THE COURT: All right, let's get the jury, please.

22 (Pause.)

23 THE COURT: One thing I was going to remind the
24 Government, when you are finished, if you can take down the
25 board. I just want to be able to see the jurors. Thanks.

Rebuttal - Shihata

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1 (Pause.)

2 THE COURTROOM DEPUTY: All rise.

3 (Jury enters.)

4 THE COURTROOM DEPUTY: You may be seated.

5 THE COURT: All right, good morning, everybody.

6 THE JURY: Good morning.

7 THE COURT: We are ready to proceed. We are going
8 to continue with the rebuttal summation by Ms. Shihata.

9 Go ahead.

10 MS. SHIHATA: Good morning, everyone.

11 THE JURY: Good morning.

12 MS. SHIHATA: Now, I think where I left off
13 yesterday I was talking about Sonja, and some of the arguments
14 defense counsel made regarding her.

15 And defense counsel claimed there was no evidence
16 supporting that Sonja was locked in a room at that studio, The
17 Chocolate Factory, when it was on Larrabee Street. And that's
18 just not so. You heard Sonja testify powerfully and
19 convincingly that she was locked in a room. And that, alone,
20 is enough to find that act proven.

21 But you also know that defense counsel's claim that
22 there is no evidence that any doors at that studio where she
23 was held locked from the outside. That's also not true. Nick
24 Williams testified about that at the transcript at 3545.

25 (Exhibit published.)

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Rebuttal - Shihata

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1 And you can see that there on your screen:

2 With respect to the offices, could any of these be
3 locked from the outside?

4 Answer: I seem to recall that offices like Tom's
5 office could be locked and just with a key.

6 Fair to say that there may be other types of rooms
7 in the studios that have locks on them?

8 I'm sorry, but anyway, so, you can look at 3545
9 related to that.

10 MS. SHIHATA: And you also know by Sonja's
11 description that the room that she was in was, in fact, an
12 office. It was Mr. Hyams' office, that former owner at the
13 studio. And so, there is between her testimony, Mr. Williams'
14 testimony, the room you know she was in, there is sufficient
15 evidence regarding that.

16 Now, yesterday in closing argument defense counsel
17 repeatedly accused the Government of trying to mislead you and
18 lying to you, and that is simply not what the record shows.
19 It's not even what his so-called examples show.

20 He claimed that the Government misled you by
21 entering photos into evidence of the defendant interacting
22 with Jane during that first R. Kelly concert that she went to.
23 He said that we were trying to create a false narrative that
24 the defendant targeted her.

25 Ladies and gentlemen, no one here claimed that Jane

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1 was the only person the defendant interacted with during that
2 concert. No one.

3 Jane testified that the defendant showed her a lot
4 of attention at the concert. Remember, she was right up front
5 there in the pit area. And how did she get there? That
6 wasn't her original seat assignment. Someone from the
7 defendant's entourage gave her two wristbands so she could
8 access that area.

9 And the photo that Mr. Cannick complained about us
10 introducing, that was Government Exhibit 248(a), a screenshot
11 from Jane's phone at the time showing those two wristbands.

12 (Exhibit published.)

13 MS. SHIHATA: You see it on the screen.

14 That's not misleading, ladies and gentlemen, that's
15 called corroboration.

16 And by the way, you know that the defendant took
17 notice of Jane at that concert in April 2015 because Jane
18 didn't somehow magically conjure up the defendant's phone
19 number. Somebody gave it to her. And you know who did, a
20 member of that enterprise. You can see it in Jane's testimony
21 at page 773 of the transcript.

22 And she said -- and the question was:

23 Question: During the show, what, if any, additional
24 contact did you have with other associates of the defendant?

25 Analysis: When he performed his second set of the

Rebuttal - Shihata

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1 stage that was further in the middle of the crowd, someone
2 from his entourage did come to me and they gave me a sheet of
3 paper and said, Don't tell anyone.

4 Did you take a look at the sheet of paper?

5 I did.

6 What was on the sheet of paper?

7 It was the defendant's name and a phone number.

8 And then it goes on: It was Rob and it had a
9 number.

10 She even remembered the telephone number.

11 And then there's phone records in evidence.

12 Government Exhibit 157. That's the defendant's outgoing calls
13 to Jane. And when you look at it, and you'll have it, it's
14 ten pages long. Ten pages long. Outgoing calls from the
15 defendant to Jane beginning in April 22nd, 2015 and going
16 through the end of December 2015.

17 And by the way, there was also some talk about how
18 when Jane was on the bus that wasn't punishment, that was --
19 Jane was on there because she was lazy and needed to do her
20 homework or something like that.

21 Well, you saw Alesiette Mayweather's texts.

22 Remember, *the punishment was real* she wrote there. And those
23 texts were from May 2016. And there's a stipulation in
24 evidence, which we read to you during this trial at some
25 point, that records from Jane's virtual school show that she

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1 was done with school on April 29th, 2016. So, when Alesiette
2 Mayweather sent those texts with her contemporaneous thoughts
3 about what was going on, school was done. No homework to do
4 on that bus.

5 Now, these are just some examples of defense counsel
6 playing fast and loose with the facts in the record. I'm not
7 going to go through them all, we'd be here all day, literally,
8 if I did, but my point here is don't just take their word for
9 it. Don't even take my word for it. If you have a question,
10 ask to see the evidence.

11 Now, defense counsel also claimed that none of the
12 government's witnesses said that they saw the defendant with
13 an underage person.

14 You know that that is simply not true. Cheryl Mack
15 saw the defendant with an underage person, 17-year-old Jane.
16 And you know Cheryl knew her age because she booked that first
17 American Airlines flight for Jane to LA at the end of 2015.
18 And then she met Jane shortly thereafter at the Mandalay Bay
19 in Las Vegas. You saw those text messages and you heard
20 Cheryl Mack testify about that. And she didn't just see
21 17-year-old Jane platonically hanging out with the defendant;
22 no, remember what she told you. In July 2015 the defendant
23 was performing three shows at a casino in Connecticut. And
24 you will also have in the records, in the evidence you'll see,
25 there is an exhibit that shows he was performing at the

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1 Foxwoods Casino at that time in Connecticut.

2 And remember what Cheryl told you she saw in the
3 dressing room after that last show, Jane's head going towards
4 the defendant's penis to give him oral sex. And she said that
5 was her cue to leave the room. You heard that last week.

6 Who else saw the defendant with an underaged person?

7 Angela. She saw and experienced the defendant
8 engage in sexual acts with both herself as a young teenager at
9 his apartment, and with two other young teenagers that day she
10 first met him, Tiffany and another girl. And she told you
11 that at a tour stop in Washington, D.C. in 1992 or '93, she
12 saw the defendant with his head between Aaliyah's legs giving
13 her oral sex. Aaliyah was just 13 or 14 at the time.

14 And Anthony Navarro told you he recognized Jerhonda
15 as a guest who stayed at Olympia Fields. Now, he didn't
16 identify her by name, but he recognized her photograph,
17 Government Exhibit 70. And recalled seeing her at the Olympia
18 Fields house and giving her rides and picking up food for her.
19 That's at the transcript 508 to 09. He stopped working for
20 the defendant in 2009, he testified to that. So, when he saw
21 Jerhonda there, she was just 16 years old. You have her birth
22 certificate, you know that. Yet another person who saw the
23 defendant with an underaged girl.

24 And remember that defense witness Larry Hood, his
25 childhood friend and former Chicago police officer who claimed

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1 he left the PD in good standing, but then admitted he actually
2 left after a felony forgery conviction and admitted he lied
3 under oath. Remember him. He said he acted as security for
4 the defendant at various times, including in the early days.
5 And after first claiming he had never seen the defendant with
6 underaged girls, he almost immediately contradicted himself,
7 acknowledging that Aaliyah was a teenager and he saw her with
8 her little hype girls at the studio to include Angela, herself
9 underage at the time. And he also admitted to you that he, as
10 security for the defendant, wasn't checking a single ID at the
11 studio.

12 And you heard that from a lot of witnesses at this
13 trial. Security wasn't checking IDs all the time. Defense
14 counsel saying it doesn't make it so.

15 Now, did everyone on that board know for certain
16 that there were underage girls around?

17 Maybe not, but they certainly weren't checking. And
18 I submit to you that they didn't really care and they turned a
19 blind eye. They wanted to stay employed and they didn't ask
20 questions. That was their focus.

21 Now, I want to talk a bit about Jerhonda, because
22 defense counsel spent some time on this yesterday. And his
23 argument, literally, makes zero sense when you look at the
24 actual evidence.

25 So, he called Jerhonda a stalker and a groupie

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1 extraordinaire, and he claimed that the defendant never had
2 sex with her. He said Robert vehemently denies any sexual
3 relationship with Jerhonda. And he claimed that the only time
4 she was in his house was when she jumped a fence and got
5 inside and took some photographs and somehow found a T-shirt
6 in the house and magically got his sperm on it. Remember,
7 he's not even house when that happens.

8 And he also claimed that the last assault and sex
9 that Jerhonda told you about when the defendant choked her and
10 ejaculated on her face and she wiped his semen off of the
11 T-shirt, that's the basis for that forced labor charge in the
12 indictment, that she never told the lawyer at the Loggans law
13 firm that she had a T-shirt when she first met with him --
14 with her.

15 Defense counsel is dead wrong on that. Look at the
16 actual testimony from Courtney Wilson, the lawyer who took
17 Jerhonda's information and drafted that new client memorandum.
18 What did she tell you under oath on that witness stand? That
19 just four days after this incident occurred in January 2010,
20 among the information that Jerhonda told Ms. Wilson, quote,
21 that she had a T-shirt that had semen on it from Mr. Kelly,
22 unquote. And then she further said, quote, she had used the
23 T-shirt to wipe it off from her body. That's the transcript
24 at 608, entirely consistent with what Jerhonda told you on
25 that witness stand. And remember, this is late January 2010.

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Rebuttal - Shihata

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1 Why is that important?

2 Because this whole theory about Jerhonda breaking
3 into the house and getting a T-shirt with sperm, which isn't
4 actually supported by anything in the record, that's happened,
5 right, that happened when Anthony Navarro was still working
6 for the defendant at Olympia Fields. And Anthony Navarro left
7 in 2009. And defense counsel suggested to you, wrongfully, as
8 we just went over, that Jerhonda didn't say anything about the
9 T-shirt when she first went to the Loggans law firm, which
10 we've now established is incorrect, and that she and Dominique
11 then jumped the fence, got onto Olympia Fields, and somehow
12 got this T-shirt with the semen on it at a time when the
13 defendant was traveling and not in the house.

14 And he suggested to you that it was after getting
15 that T-shirt that -- sorry, he suggested to you that she first
16 went to the law firm, she didn't have that evidence, and then
17 she had to go and get it, and so she broke into the house.
18 But again, it doesn't -- it's internally inconsistent. The
19 timing doesn't work out because she is -- Anthony Navarro is
20 2009, she goes to the law firm in January 2010 and, by the
21 way, mentions the T-shirt.

22 It's also absurd for the defendant to argue that
23 Jerhonda was a stalker because of the phone records in
24 evidence.

25 This is Government Exhibit 149. Ms. Geddes talked

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Rebuttal - Shihata

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1 about this yesterday, and if you look at it, it is pages and
2 pages of phone records, phone contact between the defendant
3 and Jerhonda. It's going both ways. She's not a stalker,
4 ladies and gentlemen, he was having sex with her when she was
5 16 years old, just like she told you. And he was video
6 recording it when she was 16 years old using a Cannon video
7 camera and an iPhone 3GS. That's sexual exploitation of a
8 minor and production of child pornography.

9 And by the way, if he didn't know this person and
10 she was some crazy stalker, what's the defendant doing with
11 those doctored copies of her birth certificate, state ID and
12 this fake employment ID in the locked safe in the storage
13 facility? And why is he paying her a 1.5-million-dollar
14 settlement if she's just made this thing up out of whole cloth
15 and he can prove it?

16 Again, just because defense counsel says it, doesn't
17 make it so.

18 Now, I want to turn to Faith for a moment. Defense
19 counsel talked to you about these texts between Faith and the
20 defendant from April 2018. And, you know, you saw he showed
21 you those texts during his closing argument, but that wasn't
22 the first time you saw those texts. You saw those texts
23 because they were part of an attachment to that threatening
24 letter that the defendant sent to Faith's lawyer right here in
25 Brooklyn. That's Government Exhibit -- it's in Government

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1 Exhibit 231(a). And here they are, these texts from April.

2 (Exhibit published.)

3 MS. SHIHATA: But you also heard her testify about
4 them. And I am going to put this on the screen.

5 (Exhibit published.)

6 MS. SHIHATA: You heard her testify about it in
7 pages 2282 to 2285 of the transcript and defense counsel
8 completely ignored what Faith actually said about this.

9 And remember what Faith told you. She told you she
10 went to the Dallas Police Department to make a report before
11 these texts were sent in April 2018. And she reported to the
12 Dallas PD that she had contracted herpes from the defendant,
13 and the police -- and then she tried, she told you she was
14 present there with the police officers and they tried to make
15 a recorded call to the defendant and he didn't answer. And
16 she was advised to try to do that again.

17 And so, what did she tell you she did?

18 That she sent these texts in April 2018 to try to
19 get him on the phone, and she did get him on the phone and her
20 lawyer was conferenced in and they recorded it. And they
21 tried to talk about the herpes and he said, the defendant
22 said: I'm not talking about that over the phone. Why don't
23 you come to Chicago? She didn't end up going, but that is
24 what these texts are about. You know that because she
25 testified about it.

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1 (Exhibit published.)

2 MS. SHIHATA: It wasn't her trying to get back with
3 him.

4 THE COURT: Ms. Shihata, I am just going to remind
5 you to don't speak too quickly, okay?

6 MS. SHIHATA: Okay.

7 And by the way, you also heard from her she went to
8 the Dallas PD, she went to the police department in Long
9 Island. She did all that. She reported what happened to her
10 in two different cities before filing that lawsuit in
11 New York. So, when Mr. Cannick says nobody went to the
12 police; once again, wrong.

13 Now, let's talk about Racketeering Act One, the
14 bribery charge.

15 Now, defense counsel in his closing argument,
16 basically, he wants you to look at one question and answer
17 between Mr. Smith and a lawyer. But, again, you need to look
18 at the totality of the evidence, and that includes the
19 totality of Demetrius Smith's testimony. And that shows you
20 that the defendant had everything to do with that bribery.

21 It's the defendant who tells Smith Aaliyah's in
22 trouble and to get them on a plane back to Chicago as soon as
23 possible.

24 It's the defendant who tells Smith, quote: Don't
25 call Barry, it's deeper than you think. That's at transcript

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1 613. And you know who Barry is, the defendant's manager at
2 the time and Aaliyah's uncle, Barry Hankerson.

3 It's the defendant who while on the plane tells
4 Smith, quote: Aaliyah, man, she thinks she's pregnant.
5 That's at 703 in the transcript.

6 And Smith told you what the defendant's demeanor was
7 when he said that; worried.

8 It's the defendant who tells Smith he needs to marry
9 Aaliyah to protect himself.

10 And the advice of Derrel McDavid, another member of
11 that enterprise, to protect himself. From what? Jail.

12 And when Smith tells the defendant: You shouldn't
13 do it, and tries to talk him out of it, it's the defendant who
14 tells Smith: Whose side are you on? Transcript 710.

15 And then what does Smith tell you? He thought he
16 was gonna get, quote, pushed out of the loop and he wanted to
17 stay in that loop, in that inner circle, in that enterprise.
18 And while they're all there discussing how to make this
19 marriage happen and quickly, Smith suggests he can bribe an
20 employee at the welfare office to get this fraudulent ID for
21 Aaliyah. And at transcript 712, Smith makes clear that the
22 defendant was there for that discussion. Then they drive to
23 that welfare office, and the defendant heads there, too. He's
24 in a car behind Smith with Aaliyah. That's at the transcript
25 718.

1 The defendant knows what they're doing. He knows
2 where they're going. They're all there to help the defendant,
3 to protect the defendant. And the defendant, of course, is
4 there to make sure this all happens, to make sure it all goes
5 smoothly. He's in that car with Aaliyah. He knows she's not
6 on welfare. He just wrote and produced her first album. He's
7 got to be there to make sure she gets out of that car and goes
8 along with all of this, gets her photo taken. She's not going
9 to listen to Demetrius Smith, she's going to listen to the
10 defendant.

11 Now, he doesn't go inside that welfare office, but
12 that makes sense. R. Kelly going inside might draw some
13 attention, but he's in the car right outside. And you know
14 the \$500 used for that bribe came from the defendant. This is
15 all being done for him. Smith isn't using his own money for
16 that bribe. And Derrel McDavid is the defendant's accountant,
17 the one who pays the bills and the other expenses for the
18 defendant, but those bills and expenses aren't paid with
19 Derrel McDavid's money, they're paid with the defendant's
20 money. And this bribe is just another expense for that
21 enterprise.

22 And then after the welfare office, the defendant,
23 Aaliyah, Mr. Smith, they all go to the Fed Ex or shipping
24 company to get a second fake ID for Aaliyah. That's at
25 transcript 722. And then finally, they eventually go to the

Rebuttal - Shihata

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1 County Clerk's office to get the marriage license. And the
2 defendant has to go inside for that because he's the one
3 getting married. And it's there that he and Aaliyah have to
4 present their IDs, so you know the defendant sees the
5 fraudulent ID then and hears Derrel McDavid have to do some
6 convincing of the clerk. And, again, he's not surprised, he
7 knows Aaliyah's not on welfare and he knows how she just got
8 that ID.

9 Throughout this trial, you have seen and heard how
10 the defendant is, basically, a control freak. You heard how
11 just a couple of hours before Smith paid that bribe, the
12 defendant gave Smith an ultimatum: Whose side are you on?
13 And he goes with Smith from location to location to get this
14 marriage license and get this marriage done quickly. It's all
15 for his benefit and for his protection. The idea that he had
16 no earthly idea what was going on is ridiculous.

17 Now, you also heard a lot in the closing arguments
18 about how this case doesn't involve a real crime or any real
19 crimes, that it's manufactured, it's fake, it's an overreach.

20 Well, as the judge will instruct you, these charges
21 are real. We wouldn't be here today or the past six weeks,
22 you guys have come in and sat so attentively, if they weren't.

23 Having sex with underage Aaliyah isn't a
24 relationship, it's a crime.

25 Having sex with underage Jerhonda isn't a

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Rebuttal - Shihata

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1 relationship, it's a crime.

2 Having sex with underage Jane isn't a relationship,
3 it's a crime.

4 Videotaping sex with minors, like Jerhonda, Jane and
5 Stephanie, is a crime.

6 Knowingly exposing Jane and Faith to his genital
7 herpes through unprotected sexual intercourse without
8 informing them first is a crime.

9 Forcing Jane to engage in sexual services with
10 others, including total strangers, and forcing her to
11 participate and star in his pornographic videos, in those
12 circumstances -- in the circumstances charged here, that's
13 forced labor and that's a crime.

14 Putting Faith in a small, enclosed room with a gun
15 nearby within reach, grabbing the back of her head and forcing
16 it onto his penis to give him oral sex in the circumstances
17 charged here, it's forced labor and that's a crime.

18 Causing money to be paid to a public employee for a
19 fraudulent ID so you can marry a 15-year-old and hide your
20 sexual abuse of her is bribery, and that's a crime.

21 Everything charged in the indictment is a crime.
22 Mr. Cannick suggested to you it's -- it's like traveling with
23 your boyfriend or girlfriend on business and somehow getting
24 charged with a federal crime.

25 No, it's not. The purpose here of that travel was

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Rebuttal - Shihata

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1 for illegal sexual activity. That's what's charged here and
2 that is what we have proven to you beyond a reasonable doubt.

3 You also heard from the defense arguing that there's
4 no enterprise here. And you should listen to the judge's
5 instructions on this carefully because when you do, I expect
6 that she will instruct you that the term enterprise includes
7 legitimate and illegitimate enterprises, and that an
8 enterprise can be used as a vehicle, can be used -- can be a
9 vehicle used by a defendant to commit crimes. That's exactly
10 what happened here.

11 Now, defense counsel also talked to you about this
12 letter that Jane wrote purportedly to her brother, and it was
13 Defense Exhibit 0. And Defense Exhibit 0 is one page of that
14 letter, but you've actually seen more than one page of it,
15 because Government Exhibit 422 includes that one page. I am
16 showing it to you here. (Displaying.)

17 This is how it was found at the storage facility,
18 the defendant's storage facility. Pristine condition,
19 document protectors, under lock and key at the defendant's
20 storage facility.

21 And by the way, so when defense counsel told you
22 Jane wrote that letter when he was already in jail, when the
23 defendant was in jail and that it was found at the house. No,
24 wrong.

25 And by the way, if you look at it, you'll see at the

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Rebuttal - Shihata

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1 end, and this is for the jury only, please.

2 (Exhibit published to the jury only.)

3 MS. SHIHATA: Look at how she signs the letter, with
4 both her signature and then printed name underneath.

5 Who signs a letter to their brother like that?

6 You know what this was, collateral. It was saved in
7 the storage facility in pristine condition to be used at a
8 trial like this one. And it was used at a trial like this
9 one.

10 I want to briefly address this business about
11 inconsistencies in witness statements and witnesses being
12 caught in lies and how either the witnesses are lying or the
13 agents are incompetent.

14 Well, you all have been taking notes here, right;
15 and you're trying hard to do your best, I'm sure. But my
16 guess is when you go back to deliberate and maybe you compare
17 your notes, there might be some discrepancies on what each of
18 you wrote down. And maybe when you ask to see portions of the
19 transcript, you'll realize that you may have written down
20 something wrong or misunderstood something.

21 Does that mean you're incompetent? Of course, not.

22 Also, the defense talked about how you really have
23 to remember those cross-examinations and how that's really the
24 important part of this trial.

25 Well, I think if you look back, I don't think you'll

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Rebuttal - Shihata

4589

1 remember defense counsel's cross-examinations quite like he
2 does. Yes, witnesses asked him to repeat questions and to
3 clarify. You know why? Because often his questions were
4 unclear. And when he didn't get an answer he wanted, he just
5 repeated them over and over sometimes or said, I didn't ask
6 you X-Y-Z, I asked you whatever.

7 Well, actually, you did. You did ask X-Y-Z and you
8 didn't get the answer you wanted. So, then he often raised
9 his voice and walked around the courtroom and put on a show.
10 But that show is not evidence, the witness' testimony is.

11 And those supposed smoking guns that came out on
12 cross. Really? Remember that series of questions in the
13 beginning with Jerhonda when Mr. Cannick tried to suggest she
14 was lying and had advanced her age two years and in a span of
15 14 months or something like that. And then she, you know,
16 testified about the date of her birth and it all made sense.
17 That's the kind of nonsense that went on in here.

18 I submit to you that the witnesses were consistent,
19 and that wasn't because they practiced for 50 or 60 hours as
20 Mr. Cannick suggested. By the way, where did that come from?
21 Nobody testified that they practiced anything, let alone for
22 50 or 60 hours. They were consistent because they were
23 telling you what happened to them in their own lives to the
24 best of their recollection. And they were, I submit, telling
25 you the truth.

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Rebuttal - Shihata

4590

1 And we did not put on witness after witness and just
2 have them lie to you. That was the suggestion. In fact, I
3 think he said we let them lie to you. It's absurd. You sat
4 through this trial, you sat through Ms. Geddes's closing, she
5 meticulously went over how that witness testimony was
6 corroborated by other evidence, phone records. You heard
7 about search warrants of the defendant's home and storage
8 facility. But not just that, search warrants of electronic
9 evidence, business records that are in evidence, travel
10 records supporting what the witnesses told you. It is
11 nonsense to suggest that we let people lie to you. You sat
12 here, you know that's not true.

13 And by the way, the judge is going to instruct you
14 on this, there is nothing wrong with lawyers preparing
15 witnesses to testify. You will hear an instruction from the
16 judge about that. In fact, the instruction, I expect, will
17 tell you that we wouldn't be doing our job if we didn't do
18 that.

19 And the same is true, you heard about lawyers
20 representing witnesses. You are going to get an instruction
21 from the judge about that, too. And in that instruction, I
22 expect the judge will tell you there is nothing improper or
23 suspicious about a witness retaining a lawyer and that you
24 should evaluate the credibility of a witness who had a lawyer
25 present in the courtroom in the same manner that you evaluate

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Rebuttal - Shihata

4591

1 the testimony of any other witness.

2 Defense counsel also talked about choices, and in
3 his closing arguments and in the defendant's world,
4 apparently, everyone else's choices matter, except for the
5 defendant's. The so-called superstar, musical genius, legend,
6 he's not responsible for anything. He's just this passive
7 observer in his life. He's the victim here. Everything is
8 happening to him. He was just the unluckiest guy in the
9 world. He doesn't have just one person lie about him, he has
10 upwards of 40, apparently.

11 Basically, every person who said something bad about
12 him, they're lying. That was the argument you heard. That's
13 what they want you to believe. But you saw those witnesses
14 take the stand, you saw their demeanor on both direct and
15 cross, and I submit to you, you saw how they were corroborated
16 by all the other evidence and you know that they weren't lying
17 to you.

18 And by the way, you saw how different that was from
19 when the defense started to put on witnesses. I submit to you
20 that it was clear when some of them were lying.

21 That guy Danny or Donnie, whatever his name was, the
22 guy with no actual job who was supposedly there to, quote,
23 observe, learn and become. Remember his facial expressions?
24 By the way, he told you that he met the defendant in 2005, but
25 then also told you he'd been at Chicago Trax, The Chocolate

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Rebuttal - Shihata

4592

1 Factory at North Larrabee. Just one problem with that, as you
2 heard at this trial, that building, North Larrabee, was
3 demolished in 2004.

4 How about that accountant, Mr. Howard, who
5 supposedly spent upwards of ten hours a day with the defendant
6 every day for eighteen months?

7 What about all the recording the defendant was
8 supposed to be doing in the studio?

9 Between the time he gets up in the -- gets up in the
10 morning, the amount of time he spent with Mr. Howard, there
11 would be no time for anything else; no recording, no
12 basketball, nothing.

13 You also know it doesn't ring true because you can
14 do the math. Mr. Howard said he billed the defendant some
15 \$60,000 in 2018. I'm not a mathematician. In fact, I'm very
16 bad at math, that's why I'm a lawyer, but I think if you look
17 at the math you can see that if he was actually spending that
18 amount of time with him, he would be billing probably around
19 \$500,000, not 60,000.

20 Now, let's go back to how the defendant is this
21 unluckiest man in the world according to him. Not only does
22 he have all these accusers saying he did these horrible
23 things, lying about it, he's so unlucky that he filmed some of
24 those very same things. And then he kept those very same
25 recordings. And then federal agents, he's so unlucky, federal

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Rebuttal - Shihata

4593

1 agents searched his home and his storage facility and found
2 those things. Videos showing him spanking and hitting Anna,
3 just like she said. He's so unlucky that those videos show
4 him humiliating women, making Anna walk back and forth calling
5 herself a stupid bitch because he's directing her to. And
6 that wasn't role play and that wasn't consensual. You saw it
7 with your own eyes.

8 And by the way, Anna testified about that. And the
9 other video with the bodily fluids, she testified about that,
10 too, and she said she didn't want to be doing that and that it
11 was humiliating. That's at the transcript at 2876.

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13 (Continued on the following page.)
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Rebuttal Summation - Ms. Shihata

4594

1 MS. SHIHATA: And then there is Alex. You heard
2 him testify before you. The guy that the defendant called
3 nephew and was this perfect stranger that he directed them to
4 have sex with making them unwilling participants in his
5 pornography videos.

6 Defense counsel wants you to believe that Alex is
7 just a big, fat liar. But you know that's not true because
8 you saw the video. We only played part of it for you but,
9 again, the whole thing is in evidence and you can watch the
10 whole thing if you want. And you will see just what Alex
11 described in his testimony. He said the women looked
12 zombieish during sex the defendant directed to have with him
13 and I submit that's you saw on the video. And, by the way,
14 they weren't the only ones who looked zombieish. Alex did,
15 too.

16 Again, you saw all this with your own eyes, you
17 heard it with your own ears, and if you're not sure you can
18 do so again. The recordings are in evidence. The defendant
19 is not the victim here. He's not unlucky, ladies and
20 gentlemen, he's guilty.

21 For almost three decades, the defendant believed he
22 was untouchable. A legend, musical genius. You heard those
23 words over and over during this trial. He believed the music
24 and persona he created, the money at his disposal, the fame,
25 the celebrity meant he could do whatever he wanted. He still

1 believes that today.

2 And remember what Stephanie heard him say out of
3 the blue apropos of nothing at a restaurant one day. "He
4 mentioned that he likes young girls and that people make such
5 a big deal of it, but it really isn't a big deal because
6 even -- look at Jerry Lee Lewis, he's a genius, and I'm a
7 genius, and we should be allowed to do whatever we want
8 because of what we give to this world." That's at transcript
9 648 to 649.

10 And that's been the theme throughout this trial.
11 Defense counsel through their questions, their arguments,
12 have founded at that theme. All those questions about the
13 big stars that came through the studio -- Whitney Houston
14 whatnot. He wants you to focus on the celebrity and give him
15 a pass. But writing hit songs and performing on stage to
16 fans doesn't give you license to commit crimes. It doesn't
17 give you license to build up and use an enterprise of
18 sycophants, yes men, and enablers to continue those crimes
19 for decades.

20 It's time to let the defendant know that in our
21 system, no one is above the law and everyone is worthy of the
22 law's protection. That dancing at a concert, sending gifts
23 or money from the defendant doesn't mean you can't be the
24 victim of a crime. And it doesn't mean that your truth isn't
25 worthy of belief.

Rebuttal Summation - Ms. Shihata

4596

1 The defendant's victims aren't groupies or gold
2 diggers, they're human beings. Daughters, sisters, some of
3 them now mothers, and their lives matter. You saw each of
4 them take that witness stand and testify. And you saw how
5 difficult that was. Some put on a strong facade but
6 eventually broke down. Some got frustrated and upset. Many
7 of them were ashamed and embarrassed. It was often difficult
8 testimony to listen to. But, you know what, as difficult as
9 it was for all of us to hear, it was far worse for them to
10 experience and relive.

11 You heard their testimony. You've seen all the
12 evidence. You've seen who the defendant really is. He's not
13 a genius, he's a criminal, a predator who he used his inner
14 circle, his enterprise, to commit crimes with impunity for
15 decades.

16 It's time to hold him accountable. Follow the
17 judge's instructions and focus on the evidence. Don't get
18 distracted by speculation and nonsense. Find the defendant
19 guilty because that's what the evidence and justice demands.

20 Thank you.

21 THE COURT: Thank you, Ms. Shihata. How is
22 everybody doing? The next -- thumbs up, okay.

23 The next phase is I'm going to give you my legal
24 instructions and I think we can go right into them.

25 Just going to ask the Government to take that

Rebuttal Summation - Ms. Shihata

4597

1 poster down so I can see the entire jury.

2 And just before we begin, let me see the parties at
3 the side for just a minute with the court reporter.

4 (Continued on the next page.)
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Sidebar

4598

1 (Sidebar conference held on the record in the
2 presence of the Court and counsel, out of the hearing of the
3 jury.)

4 THE COURT: I assume you guys are all ready to go.
5 Good.

6 (Sidebar discussion concludes.)

7 (Continued on the next page.)

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Jury Charge

4599

1 (In open court.)

2 THE COURT: Ladies and gentlemen, you have heard
3 all of the evidence in the case as well as the lawyers'
4 arguments. I'm now going to instruct you on the law that
5 applies to this case.

6 You've all paid very close attention to the
7 evidence throughout these weeks and I ask that you continue
8 to do so as I give you these instructions.

9 The instructions are divided into three parts.

10 In the first part, I'm going to instruct you about
11 the general rules that define and govern your duties as
12 jurors in a criminal case.

13 In the second part of my instructions, I will give
14 you instructions about the crimes that are charged in this
15 case and the elements that the Government must prove beyond a
16 reasonable doubt for each crime.

17 Finally, I will give you some general rules about
18 the process of your deliberations.

19 I'm going to begin by reminding you of our
20 different roles. Your role as jurors and my role as the
21 judge. Your duty, as I explained in my opening instructions,
22 is to find the facts from all of the evidence in the case.
23 You are the sole judges of the facts and it is for you and
24 you alone to determine what weight you're going to give the
25 evidence, to resolve any conflicts in the evidence, and to

Jury Charge

4600

1 draw those inferences that you believe are reasonable and
2 warranted from the evidence.

3 My job is to instruct you on the law. You must
4 follow the law as I give it to you and apply that law to the
5 facts as you find them. It is your sworn obligation to
6 follow the law as I describe it to you whether you agree with
7 it or not.

8 You should not be concerned about the wisdom of any
9 rule of law that I state regardless of any opinion that you
10 might have about what the law may be or what you think it
11 should be. You would violate your oaths as jurors if you
12 were to base your verdict on anything other than the law as I
13 define it for you. If the lawyers have said something about
14 the law that is different from my instructions, you must
15 ignore what the lawyers say and be guided only by what I
16 instruct you on the law. You shouldn't single out any one
17 instruction but consider my instructions as a whole.

18 Since it is your job and not my job to find the
19 facts, I have neither expressed or implied any opinion about
20 how you should decide the case. You should not conclude from
21 anything that I've said during the course of the trial
22 including these instructions that I have any opinion about
23 the facts or the merits of the case. For example, there were
24 times throughout the trial that I might have asked a witness
25 a question. You shouldn't assume that I have any opinion

Jury Charge

4601

1 because I did that. Any question that I asked was either to
2 make something clearer or to expedite the trial.

3 In determining whether the defendant is guilty or
4 not guilty of these charges, you must not consider anything I
5 have said or done. I have no view about the defendant's
6 guilt or innocence. And it is your function to determine
7 what the facts are, not mine. The fact that the defendant is
8 prosecuting this case in the name of the United States of
9 America should not affect your evaluation of the evidence and
10 the facts before you. The Government is not entitled to
11 greater consideration than the defendant. By the same token,
12 it is entitled to no less consideration. All parties,
13 government or individuals, stand as equals in this court and
14 are entitled to equal consideration. Neither the Government
15 or not defendant is entitled to any sympathy or favor.

16 It is your responsibility to decide the facts with
17 complete fairness and impartiality and without any bias or
18 prejudice or sympathy for any party. You must perform your
19 duty as jurors with complete fairness and impartiality. You
20 must consider the evidence carefully and impartially, follow
21 the law as I give it to you, and reach a just verdict
22 regardless of the consequences.

23 It would be improper for you to consider any
24 feelings that you might have about the defendant's race,
25 religion, national origin, ethnic background, occupation,

Jury Charge

4602

1 sex, or age. Every person is entitled to the presumption of
2 innocence and the Government has the same burden of proof
3 with every defendant. It would be also be improper for you
4 to permit any feelings that you might have about the nature
5 of the crimes that are charged to influence your
6 decision-making process.

7 As I believe I told you when you were selected as
8 jurors, the indictment is a document that the Government uses
9 to give the defendant notice of the charges against him and
10 to bring him before the Court. The indictment in this case
11 contains nine separate counts and you will be called upon to
12 render a separate verdict as to each count.

13 The indictment is an accusation and nothing more.
14 It is not evidence and is entitled to no weight in your
15 determination of the facts. The defendant has pled not
16 guilty to the indictment. The burden is on the Government to
17 prove the defendant's guilt beyond a reasonable doubt. This
18 burden never shifts to the defendant. He does not have to
19 prove that he is innocent. He does not have to present any
20 evidence at all. If the Government does not meet its burden
21 of proving the defendant's guilt beyond a reasonable doubt,
22 you must reach a verdict of not guilty.

23 The defendant is presumed to be innocent of all the
24 charges against him. The presumption of innocence alone,
25 unless it is overcome by proof beyond a reasonable doubt, is

Jury Charge

4603

1 sufficient to reach a verdict of not guilty. The defendant
2 is presumed innocent unless and until you decide unanimously
3 that the Government has met its burden and proven him guilty
4 beyond a reasonable doubt. This presumption was with the
5 defendant when the trial began and it remains with him now,
6 and will continue into your deliberations unless and until
7 you are convinced that the Government has proven his guilt
8 beyond a reasonable doubt.

9 So what is a "reasonable doubt"? It is a doubt
10 that is based on reason and common sense. The kind of doubt
11 that would cause a reasonable person to hesitate to rely on
12 it and act on it in a matter of importance in her or his
13 personal life.

14 A reasonable doubt is not a caprice or a whim. It
15 is not a speculation or suspicion. It is not an excuse to
16 avoid an unpleasant duty. It is not based on sympathy.
17 Proof beyond a reasonable doubt is not proof beyond all
18 doubt. Rather, it is proof that is so convincing that a
19 reasonable person, based on that proof, would not hesitate to
20 draw the conclusion offered by the Government.

21 If after fair and impartial consideration of all of
22 the evidence that you have heard in this trial you have a
23 reasonable doubt, it is your duty to acquit the defendant.
24 On the other hand, if after fair and impartial consideration
25 of all the evidence that you have heard, you are satisfied

Jury Charge

4604

1 with the defendant's guilt beyond a reasonable doubt, you
2 should vote to convict.

3 Under your oath as jurors, you are not permitted to
4 consider the question of the part that the defendant might
5 receive if he is convicted. It is my duty, and my duty
6 alone, to impose a sentence if the defendant is convicted.
7 It is your job to weigh the evidence in the case and
8 determine whether the defendant is guilty beyond a reasonable
9 doubt solely on the basis of the evidence.

10 I'm now going to talk to you about what is evidence
11 and how you should consider it.

12 As I've told you before, you must determine the
13 facts in this case based only on the evidence that was
14 presented, and on the inferences that can reasonably be drawn
15 from that evidence. The evidence consists of testimony from
16 the witness on direct and cross-examination, the physical
17 exhibits that were admitted into evidence, and stipulations
18 between the parties. As I believe I've told you before, a
19 stipulation is an agreement between the parties that certain
20 facts are true. You should regard those agreed facts as
21 true.

22 Certain things are not evidence and you should
23 disregard them in deciding what the facts are in this case.

24 First, as I believe I've mentioned several times,
25 arguments and statements by the lawyers including opening

Jury Charge

4605

1 statements and summations are not evidence. If a lawyer said
2 something about the evidence in an opening statement or in a
3 summation that conflicts with your recollection of the
4 evidence, it is your recollection of the evidence that
5 controls.

6 Second, any questions that the lawyer asked a
7 witness that the witness did not answer are not evidence.

8 Third, objections to questions or to exhibits are
9 not evidence. And any statements the lawyer might have made
10 when the lawyer object are not evidence. Lawyers have a
11 right to a duty to object and to request a sidebar conference
12 if they believe that a question is improper or that evidence
13 should not be received. But you should not be influenced by
14 any objections or by any of my rulings on the objection. If
15 I sustained an objection, ignore the question. If I
16 overruled the objection, treat the answer just like any other
17 answer.

18 Fourth, if I have stricken any testimony from the
19 record and told you to disregard it, that's not evidence.

20 Fifth, anything you might have heard or seen
21 outside of the courtroom is not evidence. Your verdict must
22 be based only on the evidence that was presented at this
23 trial or the lack of evidence. In this regard, I have told
24 you on almost every time that we've left for the day not to
25 read any articles, watch any television reports, or listen to

Jury Charge

4606

1 the radio or read any accounts about this case. That
2 instruction continues until the very end of the case until
3 after you have rendered a verdict.

4 There are, generally speaking, two types of
5 evidence: Direct evidence and circumstantial evidence. You
6 may rely on both types of evidence to reach your verdict in
7 this case.

8 Direct evidence is testimony from a witness about
9 something she knows from her own senses. Something she has
10 seen, felt, touched, tasted, or heard.

11 Circumstantial evidence is proof of a chain of
12 circumstances that point to the existence or to the
13 nonexistence of certain facts. There's a very simple example
14 of circumstantial evidence. Suppose you came into a court on
15 a day when the weather was clear and sunny and dry. But
16 after you've been in the windowless courtroom for several
17 hours, you see somebody walk in who has a wet raincoat and
18 you see another person who is shaking a wet umbrella.
19 Obviously, you cannot look outside the courtroom, and so, you
20 can't see whether it's raining. You have no direct evidence
21 that it rained, but it would be reasonable and logical for
22 you to infer from these circumstances the wet coat, the
23 dripping umbrella that it rained outside while you were
24 sitting in court.

25 That's all there is to circumstantial evidence.

Jury Charge

4607

1 It's on the basis of reason, experience, and common sense.
2 You may infer the existence or nonexistence of a fact from
3 one or more established facts. Inferences are conclusions
4 that reason and common sense lead you to draw from the facts
5 that were established by the evidence. Use your common sense
6 in drawing inference. An inference is not a suspicion or a
7 guess. It is a reasoned, logical, decision to conclude that
8 a disputed fact exists on the basis of another fact that you
9 know exists. So while you are considering the evidence that
10 was presented to you, you are permitted to draw reasonable
11 inferences from the facts proven at this trial.

12 Our law makes no distinction between the weight to
13 be given direct and circumstantial evidence. One is not
14 better than the other. You must base your verdict on a
15 reasonable assessment of all of the evidence in this case.
16 Whether it's based on direct or circumstantial evidence or on
17 logical and reasonable inferences to be drawn from that
18 evidence, you must be convinced of the defendant's guilt
19 beyond a reasonable doubt before you may convict.

20 Now, you have heard evidence that the defendant
21 engaged in conduct including crimes other than the crimes
22 that are charged in the indictment. The defendant is not on
23 trial for committing any acts that are not charged in the
24 indictment, or for any acts committed outside the time
25 periods that are charged in each count of the indictment.

Jury Charge

4608

1 Consequently, you may not consider evidence of those other
2 acts as a substitute for the evidence that the defendant
3 committed the crimes that are charged in this case. Nor may
4 you consider that evidence as proof that the defendant has a
5 criminal propensity. In other words, you may not conclude
6 that he likely commit the crimes charged in this indictment
7 because he was predisposed to criminal conduct.

8 Instead, you may consider the evidence of this
9 uncharged conduct only for the limited purposes that I'm
10 going to describe for you now. You may consider the evidence
11 of the uncharged conduct only as evidence of the existence of
12 the charged enterprise and evidence that the enterprise
13 engaged in racketeering activity.

14 As evidence of the defendant's position or role
15 within the enterprise.

16 As evidence of the development of relationships of
17 mutual trust between the defendant and others with whom he is
18 charged with carrying out the charged crimes.

19 As evidence of conduct that is inextricably
20 intertwined with evidence of the charged crimes.

21 As evidence enabling you to understand the complete
22 story of the charged crimes.

23 As evidence of a modus operandi that the defendant
24 and his accomplices formed to commit the charged crimes.

25 As evidence corroborating the testimony of other

Jury Charge

4609

1 government witnesses.

2 You may not consider the evidence of uncharged
3 conduct by the defendant for any other purpose than the ones
4 that I have just described to you.

5 Now, the Government has presented evidence in the
6 form of charts or summaries. These were shown to you to save
7 time to make certain evidence more meaningful, and to aid you
8 in considering the evidence. It is for you to decide whether
9 the charts or summaries correctly present the information
10 contained in the testimony, and in the exhibits on which they
11 were based. Because they were admitted into evidence, you
12 may consider the charts and the summaries as evidence, but
13 you are to give them no greater consideration than you would
14 give it the evidence on which they were based.

15 Now, one of your duty as jurors is going to be to
16 determine the credibility of the witnesses who testify.

17 You are the sole judges of the witnesses's
18 credibility and the weight their testimony deserved. There
19 is no magical formula for judging a witness' testimony. You
20 all make these decisions in your own lives when you are
21 evaluating whether someone is being credible, and the
22 standards that you use in your own lives are the same
23 standards that you should use here. Your determination of
24 credibility depends on the impression that a witness made
25 upon you as to whether that person was telling the truth or

Jury Charge

4610

1 giving you an accurate version of what happened. You should
2 be guided by your common sense. In making your decision, you
3 may take into account any number factors including the
4 following:

5 The witness' opportunity to see, hear, and know
6 about the events that the witness described.

7 The witness' ability to recall and describe those
8 things accurately.

9 The witness' manner of testifying. Whether the
10 witness was candid and forthright, or if he seemed, or she
11 seemed, to be hiding something. Whether the witness was
12 evasive or suspect in some way.

13 How did the witness' testimony on direct
14 examination compare with the witness' testimony on
15 cross-examination.

16 Was the witness' testimony reasonable in light of
17 all of the other evidence in the case.

18 Did the witness have any possible bias or any
19 relationship to the Government or the defendant?

20 Any loyalty or motive to shade the truth, or any
21 possible interest in the outcome of the trial.

22 Was the witness' testimony contradicted by the
23 witness' other testimony been what the witness did or said on
24 a previous occasion by other witness' testimony, or by other
25 evidence.

Jury Charge

4611

1 Inconsistencies or discrepancies in a witness'
2 testimony or, among the testimony of different witnesses, may
3 or may not cause you to discredit the witness' testimony.

4 If there is a discrepancy or an inconsistency, you
5 should consider whether it relates to an important fact,
6 whether it is an unimportant detail. Whether it was
7 intentional, or whether it was the result of an innocent
8 mistake. You should also consider whether the witness had a
9 common-sense explanation for any inconsistency. If you
10 determine that a witness has purposely lied to you that's
11 important and you should consider it seriously.

12 A witness' testimony may be discredited or
13 impeached by showing that the witness previously made
14 statements that are inconsistent with the witness' testimony
15 before you. It is your job to determine the weight, if any,
16 to be given to all or part of the testimony of a witness who
17 has been impeached by prior inconsistent statements. You
18 should first determine whether the prior statement is, in
19 fact, inconsistent. If you find that a witness made an
20 inconsistent statement, you may consider that fact in
21 assessing the witness's credibility. You may consider
22 whether you believe the witness or accept his or her
23 testimony even though there was a prior inconsistent
24 statement. In making this determination, you should consider
25 the importance of the subject matter of the statement. If

Jury Charge

4612

1 you find that the matter is relatively unimportant, you may
2 decide not to attach much significance to the inconsistency.
3 If you find that the matter is important, you may decide that
4 it casts substantial doubt on the witness' credibility.

5 If you find that a witness' statement on the stand
6 is false, either in whole or in part, you may disregard the
7 particular part that you find to be false, or you may
8 disregard the witness' entire testimony.

9 Now, you heard testimony from four expert
10 witnesses. Veronica Jackson testified as an expert in
11 forensic biology. Yongfei Wu testified as an expert in
12 forensic biology and in DNA analysis. Dr. Iffath Hoskins
13 testified as an expert in the field of medicine with a
14 specialization in obstetrics and gynecology including the
15 diagnosis, treatment, and effects of sexually transmitted
16 diseases. And Dr. Dawn Hughes testified as an expert in
17 clinical and forensic psychology with a specialization in
18 interpersonal violence and traumatic stress.

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Charge of the Court

4613

1 (Continuing.)

2 THE COURT: An expert witness is allowed to express
3 an opinion on matters about which she or he has special
4 knowledge and training. Ordinarily, witnesses are limited to
5 testifying concerning matters of fact, and the rules of
6 evidence do not allow witnesses to testify about their
7 opinions or conclusions. Experts are the exception to this
8 rule. If specialized knowledge will help the jury understand
9 the evidence, or decide a disputed fact, a witness qualified
10 as an expert by knowledge, skill, experience, training, or
11 education may testify about that evidence or facts in the form
12 of an opinion.

13 You should consider the expert testimony that you
14 heard in this case and give it the weight that you think it
15 deserves. In weighing an expert's testimony, you may consider
16 the expert's qualification, the expert witness' opinion, the
17 expert's demeanor and reasons for testifying, as well as all
18 of the other considerations that ordinarily apply when you're
19 assessing the credibility of a witness. If you decide that
20 the expert's opinion is not based on sufficient education and
21 experience, or that the reasons given in support of the
22 expert's opinion are not sound, or that the expert's opinion
23 is outweighed by other evidence, you may disregard the
24 expert's opinion entirely.

25 In short the expert witness is just like anywhere

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1 other witness. You should not accept the testimony of an
2 expert merely because she is an expert or merely because I
3 allowed the witness to testify about his or her opinion. Nor
4 should you substitute it from own reason, judgment, and
5 common sense. As I said before and I probably will say
6 again, the determination of the facts in this case rests
7 solely with you.

8 You've also heard from law enforcement agents. You
9 should evaluate these witness' testimony in the same way that
10 you evaluate the testimony of any other witness. The fact
11 that a witness is a law enforcement agent does not mean that
12 you should give that witness' more -- that witness' testimony
13 any more or less consideration than the testimony of any
14 other witness. You should use all of those tests of
15 credibility that you just discussed with you to evaluate a
16 law enforcement witness' testimony. It is up to you to
17 decide, after reviewing the evidence, whether to accept the
18 testimony of a law enforcement witness, and to give it
19 whatever weight you believe it deserves.

20 You've heard the testimony of a witness, Demetrius
21 Smith, who testified under a grant of immunity from this
22 Court. You have also heard testimony from a witness,
23 "Louis", who testified pursuant to a cooperation agreement
24 with the Government after he pleaded guilty to a federal
25 crime. The Government argues, as it is entitled to do, that

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1 it must take the witnesses as it finds them. The law allows
2 the use of testimony by alleged accomplices and
3 coconspirators. Indeed, it is the law in the federal court
4 that the testimony of one such person may be enough in itself
5 for conviction if the jury finds that the testimony
6 establishes guilt beyond a reasonable doubt.

7 When a witness testifies under a grant of immunity,
8 his testimony may not be used against him in any criminal
9 case except in a prosecution for perjury, giving a false
10 statement, or otherwise failing to comply with this Court's
11 immunity order. I'm instructing you that the Government is
12 entitled to call as a witness, a person who has been granted
13 immunity by an order of this Court, and that you may convict
14 the defendant on the basis of that witness' testimony alone
15 if you find that the testimony proves the defendant's guilt
16 beyond a reasonable doubt.

17 Cooperator testimony must be scrutinized with great
18 care and viewed with particular caution when you decide how
19 much of that testimony to believe.

20 I have given you some general instructions on
21 credibility and I'm not going to repeat them here. Nor am I
22 going to repeat counsel's arguments on this issue. But I
23 will say a few things that you may want to consider during
24 your deliberations on the subject of cooperating witnesses
25 and witnesses who testified pursuant to a grant of immunity.

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1 You should ask yourself whether these witnesses would benefit
2 more by lying or by telling the truth. Was their testimony
3 made up in any way because they believed or hoped that they
4 would somehow receive favorable treatment by testifying
5 falsely? Or did they believe that their interests would best
6 be served by testifying truthfully? If you believe that the
7 witness was motivated by hopes of personal gain, was the
8 motivation one that would cause him to lie, or would it cause
9 him to tell the truth?

10 You have heard also that "Louis" has been promised
11 that if he provides substantial assistance to the Government
12 and testifies truthfully, completely, and fully, the
13 Government will present to the sentencing court, what is
14 called a 5K1.1 letter. The 5K letter sets forth the
15 cooperating witness' criminal acts, as well as the
16 substantial assistance the witness has provided. The 5K
17 letter does not guarantee that the cooperating witness will
18 get a lower sentence. This is because the sentencing court
19 may, but is not required to take the 5K1.1 letter into
20 account when imposing sentence on the cooperating witness.
21 The sentencing court has discretion, whether or not there is
22 a 5K letter, to impose any reasonable sentence that the Court
23 deems appropriate, up to the statutory maximum. The final
24 determination as to the sentence to be imposed rests with the
25 Court, not the Government.

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1 In sum, you should look at all of the evidence in
2 deciding what credence and what weight, if any, you will want
3 to give to the accomplice and cooperating witness. Now,
4 you've also heard lawyers ask witnesses about the fact that
5 they retained lawyers and about the fact that the lawyers
6 were in the courtroom when the witness testified. Similarly,
7 in closing arguments, counsel made arguments about witnesses
8 retaining lawyers. There is nothing improper or suspicious
9 about a witness retaining a lawyer. You should evaluate the
10 credibility of a witness who had a lawyer here in the
11 courtroom in the same manner that you evaluate the testimony
12 of any other witness.

13 The defendant did not testify in this case. Under
14 our constitution, the defendant in a criminal case never has
15 any duty to testify or to come forward with evidence. This
16 is because the burden of proof remains on the Government at
17 all times and the defendant is presumed innocent. A
18 defendant is never required to prove that he is innocent.
19 You may not attach any significance to the fact that the
20 defendant did not testify. You may not draw any inference
21 against him because he did not testify, and you may not
22 consider this against the defendant in any way during your
23 deliberations in the jury room.

24 During the trial, counsel read stipulations about
25 what certain witnesses would have said had they testified

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1 before you in-person. These witnesses were not under oath.
2 The Government and the defendant have agreed about what the
3 testimony of these witnesses would be had they testified
4 in-person at trial.

5 Now, you also heard during the course of the trial
6 and some summation, that attorneys for the Government and for
7 the defendant interviewed the witnesses when preparing for
8 trial and during the trial. You must not draw any
9 unfavorable inference from that testimony. On the contrary,
10 attorneys are obligated to prepare their cases as thoroughly
11 as possible, and in discharging that responsibility, it's
12 appropriate for them to interview witnesses in preparation
13 for trial and during the trial.

14 Now, I made some reference to prior inconsistent
15 statements before. I'm now going to talk to you about
16 impeachment by prior inconsistent statements. You've heard
17 evidence that a witness or witnesses made a statement on an
18 earlier occasion which counsel argues is inconsistent with
19 the witness' trial testimony. Evidence of the prior
20 inconsistent statement was admitted for a limited purpose,
21 the purpose of helping you decide whether you believe the
22 trial testimony of the witness who contradicted herself or
23 himself. If you find that the witness made an earlier
24 statement that conflicts with his or her trial testimony, you
25 may consider that fact in deciding how much of the testimony,

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1 if any, to believe.

2 In making this determination, you may consider
3 whether the defendant -- I'm sorry, whether the witness
4 purposely made a false statement or whether it was an
5 innocent mistake, whether the inconsistency concerns an
6 important fact, or whether it had to do with a small detail,
7 whether the witness had an explanation for the inconsistency
8 and whether that explanation appealed to your common sense.

9 It is exclusively your duty, based upon all of the
10 evidence and your own good judgment, to determine whether the
11 prior statement was inconsistent, and if it was, how much, if
12 any, weight should be given to the inconsistent statement in
13 determining whether to believe all or part of the witness'
14 testimony.

15 Our law does not require either party to call as
16 witnesses, every person who might have been present at any
17 time or place involved in the trial or who may have -- I'm
18 sorry, involved in the case, or who may appear to have some
19 knowledge of the matter that's at issue at the trial. Nor
20 does the law require any party to produce all papers and
21 things that were mentioned during the course of the trial and
22 admit them into evidence. Both the Government and the
23 defense have the same power to subpoena witnesses to testify
24 on their behalf. You should remember that there is no duty
25 on either side to call a witness whose testimony would be

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1 cumulative of testimony that's already in evidence or who
2 would merely provide additional testimony to facts that are
3 already in evidence. If the Government or the defendant
4 could have called a potential witness and neither one called
5 the witness, then you may draw the conclusion that the
6 testimony of the absent witness might have been unfavorable
7 to the Government or to the defendant or to both. On the
8 other hand, it is equally within your province to draw no
9 inference at all from the failure of either side to call a
10 witness.

11 I remind you that the defendant has no obligation
12 to present any evidence at all, only the Government has the
13 burden of proof.

14 Although the Government does have the burden of
15 proof and although a reasonable doubt can arise from a lack
16 of evidence, the law does not require that the Government
17 prove its case through any particular means. Law enforcement
18 techniques are not your concern. You're not to speculate
19 about why the Government used the techniques that they did or
20 why they did not use other techniques. Your concern is to
21 determine whether, based on the evidence in the case, the
22 defendant -- the Government has proved the defendant's guilt
23 beyond a reasonable doubt.

24 During the trial, you have heard evidence about a
25 variety of investigative techniques and methods of gathering

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1 and collecting evidence. I'm instructing you that any
2 evidence that was presented to you was obtained legally and
3 you can consider it. The methods that were used to collect
4 evidence or to investigate this case should not enter into
5 your deliberations in any respect.

6 How's everybody doing? Everybody good?

7 THE JURY: (Collectively) Yes.

8 THE COURT: Okay. I'm now going to talk to you
9 about the legal elements of the crimes that are charged. I'm
10 going to explain to you what the elements are of the crimes
11 charged in the indictment that the Government must prove
12 beyond a reasonable doubt.

13 As I said earlier, the indictment has nine separate
14 counts and you will be called upon to render a separate
15 verdict as to each count. Each count charges the defendant
16 with a different crime. You must consider each count
17 separately and return a separate verdict of guilty or not
18 guilty for each. Whether you find the defendant guilty or
19 not guilty as to one offense should not affect your verdict
20 as to any other offense charged.

21 You will notice that the indictment charges conduct
22 that occurred "on or about" a certain date. The Government
23 does not have to establish the exact date of an alleged
24 offense. It's enough if the evidence establishes beyond a
25 reasonable doubt that an offense was committed on a date

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1 that's reasonably near to the dates alleged.

2 Now, venue refers to the location of the charged
3 crimes. Each count of the indictment alleges that a crime
4 occurred -- that the crime occurred in whole or in part in
5 this judicial district, which is the Eastern District of New
6 York. The Eastern District includes Brooklyn, Queens, Staten
7 Island, Nassau and Suffolk counties on Long Island, and the
8 waters surrounding Manhattan. To establish a venue for a
9 crime in this district, the Government must prove that some
10 act in furtherance of the crime happened in the Eastern
11 District of New York. With respect to Count One which is the
12 racketeering count, the Government need only prove that some
13 act in furtherance of the racketeering offense happened in
14 the Eastern District of New York. They do not have to prove
15 that any or all of the alleged racketeering acts happened in
16 the Eastern District of New York.

17 Unlike all of the other elements, the Government
18 must prove venue only by a preponderance of the evidence,
19 that is, that it is more likely than not that some act in
20 furtherance of the crimes occurred in Brooklyn, Queens,
21 Staten Island, Long Island, or the waters surrounding
22 Manhattan.

23 Now, during these instructions you will hear me use
24 the words "knowingly" and "intentionally". I will define
25 these terms for you before I address the individual charges.

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1 As a general rule, the law holds individuals accountable for
2 conduct -- only for conduct that they undertook
3 intentionally. Thus, before you can find the defendant
4 guilty of the crimes charged, you must be satisfied that he
5 was acting knowingly or intentionally.

6 A person acts knowingly if he acts voluntarily and
7 intentionally, not because of ignorance, mistake or accident.
8 A person acts intentionally if he acts with the specific
9 intent to do something that the law forbids. The person does
10 not have to be aware of the specific law or rule that his
11 conduct may be violating. But he must act with a specific
12 intent to do whatever it is that the law forbids.

13 These issues of knowledge and intent require you to
14 make a determination about the defendant's state of mind,
15 something that can rarely be proved directly. A wise and
16 careful consideration of all of the circumstances before you,
17 however, may permit you to make a determination as to the
18 defendant's state of mind. In your everyday affairs, you are
19 frequently called upon to determine the state of that
20 person's state of mind from his words or from his actions in
21 given circumstances. You're being asked to do the same thing
22 here.

23 Many of the racketeering acts in Count One and
24 certain of the other counts charge the defendant with aiding
25 and abetting or willfully causing certain crimes. It is not

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1 necessary to find that the person personally committed these
2 crimes, as long as the Government proves that he -- I'm
3 sorry, it is not necessary to find that the defendant
4 personally committed those crimes, as long as the Government
5 proves that he "aided and abetted" or "willfully caused"
6 someone else to do so. This is because under the law, a
7 person who aids or abets or willfully causes another person
8 to commit an offense, is just as guilty of the offense as if
9 he committed it himself.

10 With regard to aiding and abetting, the relevant
11 statute provides: Whoever commits an offense against the
12 United States or aids or abets or counsels, commands or
13 induces, or procures its commission, is punishable as a
14 principal.

15 Therefore, you may find the defendant guilty of an
16 offense charged if you find beyond a reasonable doubt that
17 the Government has proven that another person actually
18 committed the crime with which the defendant is charged and
19 that the defendant aided and/or abetted that person in
20 committing the offense.

21 In order to find the defendant guilty of aiding and
22 abetting a crime, you must first find that someone actually
23 did commit the crime charged. Obviously, nobody can be
24 convicted of aiding or abetting the criminal acts of someone
25 else if the other person did not actually commit a crime in

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1 the first place. But if you do find that a crime was
2 committed, then you must consider whether the defendant aided
3 or abetted the commission of that crime.

4 In order to aid or abet another person to commit a
5 crime, it is necessary that the defendant knowingly associate
6 himself in some way with the crime and that he participates
7 in the crime by doing some act to help make the crimes
8 succeed. To establish that the defendant knowingly
9 associated himself with the crime, the Government must
10 establish that the defendant knew and intended that the crime
11 charged would be committed. To establish the defendant
12 participated in the commission of the crime, the Government
13 must prove that the defendant engaged in some affirmative
14 conduct or overt act for the specific purpose of bringing
15 about that crime.

16 The mere presence of the defendant where a crime is
17 being committed, even if it's coupled with knowledge by the
18 defendant that the crime is being committed or merely
19 associating with the others who are committing the crime, is
20 not enough to establish aiding and abetting. One who has no
21 knowledge that a crime is being committed or is about to be
22 committed, but inadvertently does something that aids in the
23 commission of that crime is not an aider or an abettor. An
24 aider and an abettor must know that the crime is being
25 committed and act in a way that is intended to bring about

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1 the success of the criminal venture.

2 To determine whether the defendant aided and
3 abetted the commission of a particular crime, or caused the
4 commission of the crime, ask yourself these questions:

5 First, did he participate in the crime charged as something
6 that he wished to bring about? Second, did he associate
7 himself with the criminal venture knowingly and willfully?
8 Third, did he seek, by his actions, to make the criminal
9 venture succeed.

10 If the defendant did all of these things, then he
11 is an aider and abettor, and is therefore guilty of the
12 offense. If, on the other hand, your answer to any of these
13 questions is no, then the defendant is not an aider and an
14 abettor and you must find him not guilty.

15 With regard to willful causation, the relevant
16 statute provides: Whoever willfully causes an act to be done
17 which if directly performed by him or another would be an
18 offense against the United States, is punishable as a
19 principal.

20 In order to find a defendant guilty of willfully
21 causing a crime, you must first find that another person has
22 committed the acts constituting the offense charged, second,
23 you must find that the defendant had the mental state
24 required to violate the offense charged -- to commit the
25 offense charged, and third, you must find that the defendant

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1 intentionally caused someone else to commit the requisite
2 act.

3 To convict a defendant of aiding and abetting or
4 willfully causing an offense under federal law, you must
5 unanimously agree that the Government has proven, beyond a
6 reasonable doubt, either that the defendant aided and abetted
7 the commission of the offense or that he willfully caused the
8 commission of the offense. In other words, all 12 of you
9 must agree on aiding and abetting or willfully causing. It's
10 not sufficient if some of you find that a defendant aided and
11 abetted the commission of the offense, while others find that
12 the defendant willfully caused the commission of the offense.

13 All right. The indictment contains nine counts.
14 I'm going to summarize those counts and explain what the law
15 is regarding each one. If there -- if some of the counts
16 repeat some of the same things, I'm not going to repeat it,
17 because I'll already have told you once.

18 Count One of the indictment charges the defendant
19 with violating the Racketeer Influenced and Corrupt
20 Organization Act. Count One reads as follows: In or about
21 in between January 1994 and the present, both dates being
22 approximate and inclusive, within the Eastern District of New
23 York and elsewhere, the defendant, Robert Sylvester Kelly,
24 also known as "R. Kelly," together with others, being a
25 person employed and associate with the Enterprise, an

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1 enterprise that engaged in, and the activities of which
2 affected interstate and foreign commerce, did knowingly and
3 intentionally conduct and participate directly and
4 indirectly, in the conduct of the affairs of the Enterprise
5 through a pattern of racketeering activity as defined in
6 Title 18, United States Code, Sections 1961(1) and 1961(5),
7 consisting of the racketeering acts set forth below.

8 The relevant provision of the racketeering statute
9 reads as follows: It shall be unlawful for any person
10 employed by or associated with any enterprise engaged in, or
11 the activities of which affect interstate and foreign
12 commerce, to conduct or participate, directly or indirectly,
13 in the conduct of such enterprise's affairs through a pattern
14 of racketeering activity....

15 To prove this crime, the Government must prove five
16 elements beyond a reasonable doubt. First, an enterprise, as
17 described in the indictment, existed on or about the time
18 alleged in the indictment. Second, the enterprise engaged in
19 or its activities, affected interstate or foreign commerce.
20 Third, the defendant was employed by or associated with the
21 enterprise. Fourth, the defendant knowingly conducted or
22 participated, either directly or indirectly, in the conduct
23 of the affairs of the Enterprise. Fifth, the defendant
24 knowingly participated in the conduct of the affairs or the
25 enterprise through a pattern of racketeering activity as

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1 described in the indictment; that is, through the commission
2 of at least two of the charged racketeering acts, the last of
3 which must have occurred within 10 years after the commission
4 of a prior racketeering act, or through causing or aiding and
5 abetting the commission of two such racketeering acts.

6 I'm now going to talk about these elements in
7 greater detail. First, the existence of the Enterprise. The
8 Government must prove beyond a reasonable doubt that an
9 enterprise existed. The indictment alleges the existence of
10 the following enterprise: The defendant, Robert Sylvester
11 Kelly, also known as "R. Kelly", and individuals who served
12 as managers, bodyguards, drivers, personal assistants and
13 runners for Kelly, as well as member of Kelly's entourage,
14 comprised an enterprise within the meaning of 18 U.S.C.
15 Section 1961(4), that is, the Enterprise constituted a group
16 of individuals associated, in fact, that was engaged in and
17 the activities of which affected, interstate and foreign
18 commerce. The Enterprise constituted an ongoing organization
19 who's members mentioned as a conditioning unit for a common
20 purpose of achieving the objectives of the Enterprise.

21 The purposes of the Enterprise were to promote R.
22 Kelly's music and the R. Kelly brand, to recruit women and
23 girls to engage in illegal sexual activity with Kelly and to
24 produce pornography, including child pornography. By
25 promoting R. Kelly's music and the R. Kelly brand, the

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1 members of the Enterprise expected to receive financial
2 opportunities personal benefits, including increased power
3 and status within the Enterprise.

4 In connection with the Enterprise, Kelly and other
5 members of the Enterprise traveled throughout the United
6 States and abroad to perform at concert venues, to promote
7 the R. Kelly brand, and to recruit him and girls to engage in
8 illegal sexual activities with Kelly.

9 When Kelly attended and performed at concerts and
10 other events, Kelly and/or other members of the Enterprise on
11 Kelly's behalf invited women and girls backstage and to other
12 events following Kelly's live performances. These women and
13 girls were often offered wristbands that signified that they
14 were authorized to attend an event. There, Kelly, relied
15 upon member of the Enterprise to ensure that only those
16 authorized to attend were allowed at the event and to manage
17 the flow of women and girls who were directly interacting
18 with Kelly.

19 When Kelly identified a woman or a girl who he
20 wished to see again, he either gave his contact information
21 to the woman or girl or obtained her contact information or
22 relied on members of the Enterprise to do so. Following
23 these events, Kelly communicated with certain of these women
24 and girls by telephone, including through the use of
25 traditional telephone calls, text messages, iMessaes and

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1 FaceTime. As part of this communication, Kelly often
2 requested that the women and girls provide photographs of
3 themselves.

4 Kelly and other members of the Enterprise also
5 arranged for the women and girls to travel to see Kelly on
6 occasion, including at concerts throughout the United States
7 and related events. To facilitate their travel, Kelly
8 directed the women and girls to contact a member of the
9 Enterprise, who then arranged travel for the women and girls.
10 When the women and girls arrived at the lodging, which was
11 typically selected by a member of the Enterprise, a member of
12 the Enterprise usually provided them with instructions. In
13 addition, members of the Enterprise took steps to ensure that
14 the women and girls did not interact with the other women and
15 girls whom Kelly planned to see. Members of the Enterprise
16 then arranged if the women and girls to attend his concerts
17 and positioned them such that Kelly could see them during the
18 concerts.

19 Kelly promulgated numerous rules that many of his
20 sexual partners were required to follow, including the
21 following: The women and girls were not permitted to leave
22 their room without receiving permission from Kelly, including
23 to eat or to go to the bathroom; the women and girls were
24 required to wear baggy clothing when they were not
25 accompanying Kelly to an event or unless otherwise instructed

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1 by Kelly; the women and girls were not permitted to look at
2 other men, and instead, were told to keep their heads down;
3 and the women and girls were required to call Kelly "Daddy."

4 The Enterprise operated within the Eastern District
5 of New York and elsewhere, including overseas.

6 Methods and means of the Enterprise.

7 Among the means and methods by which Kelly and his
8 associates participated in the conduct of the affairs of the
9 Enterprise were the following: Committing, attempting, and
10 aiding and abetting the commission of crimes and conspiring
11 to commit crimes, including but not limited to engaging in
12 sexual activity with girls under 18 years old, engaging and
13 facilitating sexual activity without disclosing sexually
14 transmitted disease Kelly had contracted, producing child
15 pornography, bribery, extortion, coercion and blackmail;
16 demanding absolute commitment to Kelly and not tolerating
17 dissent; obtaining sensitive information about sexual
18 partners and members and associates of the Enterprise to
19 maintain control over them; creating embarrassing and
20 degrading videos of sexual partners to maintain control over
21 them; recruiting and grooming sexual partners for Kelly; and
22 isolating women and girls from friends and family and making
23 them dependent on Kelly for their financial well-being.

24 The term "enterprise," as used these instructions
25 may include any group of people associated in fact, even

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1 though this association is not recognized as a legal entity.
2 An enterprise does not have to be a formal business entity
3 like a corporation. Nor must it be registered or licensed as
4 an enterprise or as a commonly recognized legal entity like a
5 corporation, a partnership, a business, or the like.
6 Instead, an enterprise may be merely an informal association
7 of individuals. The term "enterprise" includes legitimate
8 and illegitimate enterprises. An enterprise be can be a
9 vehicle used by a defendant to commit crimes.

10 The "enterprise" does not have to have a particular
11 name, or, for that matter, any name at all. A group or
12 association of people can be an enterprise if these people
13 have associated together for a common purpose of engaging in
14 a course of conduct. Mere similarity of conduct or the fact
15 that individuals may have assembled together and discussed
16 common aims and interests does not necessarily establish
17 proof of the existence of an enterprise, although you may
18 consider such factors. Such an association of persons may be
19 established by evidence showing an ongoing organization,
20 formal or informal, and by evidence that the people making up
21 the association functioned as a continuing unit.

22 The Government must prove that an
23 association-in-fact enterprise, existed by evidence of an
24 ongoing organization, formal or informal, and by evidence
25 that the various associates functioned as a continuing unit.

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1 The enterprise must have the three following structural
2 features, one, a purpose; two, relationships among those
3 associates with the enterprise; and three, longevity
4 sufficient to permit these associates to pursue the
5 enterprise's purpose.

6 It is not necessary that the enterprise have any
7 particular or formal structure, but it must have sufficient
8 organization that its members functioned and operated in a
9 coordinated manner to carry out the alleged common purpose or
10 purposes of the enterprise.

11
12 (Continued on the following page.)
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Jury Charge

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1 (Continuing.)

2 THE COURT: Such a group need not have a
3 hierarchical structure or chain of command. Decisions may be
4 made on an ad hoc basis and by any number of methods, by
5 majority vote, consensus, a show of strength, et cetera.
6 Members of the group do not need to have fixed roles.
7 Different members may perform different roles at different
8 times. The group does not need to have a name, regular
9 meetings, dues, established rules and regulations,
10 disciplinary procedures or initiation procedures.

11 While the group must function as a continuing unit
12 and remain in existence long enough to pursue a course of
13 conduct, you may nonetheless find that the enterprise element
14 is satisfied by finding the existence of a group whose
15 associates engage in spurts of activity that are punctuated by
16 periods of enact activity.

17 Thus, an enterprise need not have role
18 differentiation, a unique modus operandi, a chain of command,
19 sophistication of organization, diversity and complexity of
20 crimes, uncharged or additional crimes aside from the alleged
21 racketeering activity, or an enterprise name. Moreover, the
22 enterprise is not required to be businesslike in its form or
23 function and it may, but does not need, to have an economic
24 profit-seeking motive. Indeed, RICO, as the statute is
25 called, is not limited to groups whose crimes are

Jury Charge

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1 sophisticated, diverse, complex or unique.

2 Such an association of individuals may retain its
3 status as an enterprise even though the membership of the
4 association changes over time by adding or losing individuals
5 during the course of its existence. The existence of the
6 enterprise continues even if there is a gap or interruption of
7 the enterprise's racketeering activities.

8 Although whether an enterprise existed is a distinct
9 element that must be proved by the government, common sense
10 tells us that the existence of an enterprise is often more
11 readily proven by what it does rather than by an abstract
12 analysis of its structure. Thus, the evidence used to prove
13 the pattern of racketeering and the enterprise may coalesce.
14 You may consider proof of the racketeering acts to determine
15 whether the evidence establishes the existence of an
16 enterprise, and further, you may infer the existence of an
17 enterprise from the evidence of the pattern of racketeering
18 activity.

19 Moreover, it is not necessary to prove that every
20 member of the enterprise participated in or knew about all of
21 its activities. It is sufficient that the defendant knew the
22 general nature of the enterprise and knew that the enterprise
23 extended beyond his individual role. The government need only
24 establish that the defendant acted with the requisite criminal
25 intent.

Jury Charge

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1 The government is not required to prove each and
2 every allegation about the enterprise or the way in which the
3 enterprise operated. The enterprise proved however, must be
4 essentially the one that was alleged in the indictment.

5 The second element is the effect on interstate
6 commerce or foreign commerce, and the government must prove
7 this element beyond a reasonable doubt, that the enterprise
8 was engaged in or had an effect on interstate or foreign
9 commerce, even if it was just a minimal effect.

10 Interstate commerce means trade or conducting
11 business or travel between one state and another state or the
12 District of Columbia; and foreign commerce such trade,
13 business or travel between the United States and another
14 country. Therefore, interstate and foreign commerce may
15 include the movement of money, goods, services or people from
16 one state to another or the District of Columbia or between
17 the United States and another country. This may include,
18 among other things, the purchase or sale of goods or supplies
19 from outside the United States, the use of interstate or
20 international mail or wire facilities, or the causing of any
21 of those things. The government does not have to prove that
22 the defendant's acts affected interstate commerce or that the
23 defendant knew he was affecting interstate commerce.

24 With respect to proving that the enterprise had an
25 effect on interstate or foreign commerce, the government is

Jury Charge

4638

1 not required to prove a significant or substantial effect on
2 interstate or foreign commerce. This element, which simply
3 ensures federal jurisdiction over the conduct, is satisfied
4 even if a minimal effect on interstate or foreign commerce is
5 shown. The effect does not have to be direct. Any affect,
6 even if it is postponed, indirect, or slight, is enough to
7 satisfy the interstate commerce element. It does not matter
8 whether the effect is harmful or beneficial to interstate
9 commerce. Moreover, the government does not have to prove
10 that the defendant knew that the enterprise would affect
11 interstate or foreign commerce, that the defendant intended to
12 affect interstate or foreign commerce, or that the defendant
13 engaged in, or that his activities affected, interstate or
14 foreign commerce.

15 I instruct you that it makes no difference whether
16 the type of interstate commerce affected is legal or illegal.

17 It is not necessary for the government to prove that
18 the individual racketeering acts themselves affected
19 interstate commerce or foreign commerce; rather, it is the
20 enterprise and its activities considered in their entirety
21 that must be shown to have had that affect. On the other
22 hand, this effect on interstate or foreign commerce may
23 establish through the effect caused by the individual
24 racketeering acts.

25 Everybody is still good?

Jury Charge

4639

1 You need a break?

2 All right. We are going to break for ten minutes or
3 so. Please do not talk about the case.

4 THE CLERK: All rise.

5 (Jury exits the courtroom.)

6 THE COURT: Okay. Everybody can have a seat.

7 Anything before we break?

8 Okay. See you in a few minutes.

9 (Court in recess.)

10 (In open court; jury not present.)

11 (Parties present.)

12 THE CLERK: All rise.

13 THE COURT: Everybody can sit down.

14 Anything before we get the jury?

15 Okay. We will get the jury then.

16 (Jury enters the courtroom.)

17 THE CLERK: You may be seated.

18 THE COURT: All right, everybody. We are ready to
19 proceed. I would talk faster, but I have been nagging
20 everybody to slow down, so I cannot do that to the court
21 reporter.

22 I should also tell you that you will have a copy of
23 these instructions back with you in the jury room.

24 I was just getting ready to speak to you about the
25 third element, and that is association with or employment by

Jury Charge

4640

1 the enterprise. This is the third element that the government
2 must prove beyond a reasonable doubt, that the defendant was
3 associated with or employed by the enterprise at some point
4 during the period charged in the indictment.

5 "Associated with" should be given its plain meaning.
6 "Associate" means "to join, often in a loose relationship as a
7 partner, fellow worker, colleague, friend, companion or
8 ally...to join or connect with another." A person is
9 "associated with" an enterprise when, for example, he joins
10 with other members of the enterprise and knowingly aids or
11 furthers the activities of the enterprise, or conducts
12 business with or through the enterprise. The defendant does
13 not have to have been a member of or associated with the
14 enterprise for the entire period of its existence, but he must
15 have been associated with the enterprise at the time he
16 allegedly committed the crimes charged. That is, the
17 government must prove that the defendant was connected to the
18 enterprise in some meaningful way and that he knew of the
19 existence of the enterprise and of the general nature of its
20 activities. A person cannot be associated or employed by an
21 enterprise if he does not know of the enterprise's existence
22 or the nature of its activities.

23 The fourth element is participation in the
24 enterprise. The government must prove that the defendant
25 knowingly conducted or participated, either directly or

Jury Charge

4641

1 indirectly, in the conduct of the affairs of the enterprise.
2 This means that the defendant must have played some part in
3 the operation or management in the enterprise and that the
4 defendant intentionally performed acts, functions or duties
5 that are necessary to, or helpful in, the operation of the
6 enterprise. Thus, if the defendant participated in the
7 operation or management of the enterprise itself or he had
8 some part in directing the enterprise's affairs, that would
9 satisfy this element. In other words, all who participate in
10 the conduct of the enterprise, whether they are generals or
11 foot soldiers, are responsible for the affairs of the
12 enterprise.

13 The fifth element is the pattern of racketeering
14 activity. The government must prove beyond a reasonable doubt
15 that the defendant engaged in a pattern of racketeering
16 activity. "Racketeering activity" is defined to mean the
17 commission of certain crimes. A "pattern of racketeering
18 activity" generally means the following:

19 First, the defendant intentionally committed, or
20 caused, or aided and abetted the commission of two or more of
21 the racketeering acts alleged in the indictment. The most
22 recent racketeering act must have occurred within ten years
23 after the commission of a prior racketeering act. Your
24 verdict must be unanimous as to which specific racketeering
25 acts you find that the defendant committed, caused or aided

Jury Charge

4642

1 and abetted. I will instruct you on the elements of each of
2 the alleged racketeering acts.

3 Second, the racketeering acts must have a nexus to
4 the enterprise and the racketeering acts must be "related." A
5 racketeering act has a "nexus" to the enterprise if it has a
6 meaningful connection to the enterprise. To be "related," the
7 racketeering acts must have the same or similar purposes,
8 results, participants, victim, or methods of commission, or be
9 otherwise interrelated by distinguishing characteristics and
10 not be merely isolated events. Two racketeering acts may be
11 "related" even though they are not similar or not directly
12 related to each other, provided that the racketeering acts are
13 related to the same enterprise. For example, for both "nexus"
14 and "relatedness" purposes, the requisite relationship between
15 the RICO enterprise and a predicate racketeering act may be
16 established by evidence that the defendant was enabled to
17 commit the racketeering act solely by virtue of his position
18 in the enterprise or his involvement in or control over its
19 affairs, or by evidence that the defendant's position in the
20 enterprise facilitated his commission of the racketeering act,
21 or by evidence that the racketeering act benefited the
22 enterprise, or by evidence that the racketeering act was
23 authorized by the enterprise or by evidence that the
24 racketeering act promoted or furthered the purposes of the
25 enterprise.

Jury Charge

4643

1 Third, the racketeering acts themselves either
2 extended over a substantial period of time or posed a threat
3 of continued criminal activity. The government does not have
4 to prove such a threat of continuity by any mathematical
5 formula or by any particular method of proof, but rather may
6 prove it in a variety of ways. For example, the threat of
7 continued unlawful activity may be established when the
8 evidence shows that the racketeering acts are part of a
9 long-term association that exists for criminal purposes or
10 when the racketeering acts are shown to be the regular way of
11 conducting the affairs of the enterprise.

12 Moreover, in determining whether the government has
13 proven the threat of continued unlawful activity, you are not
14 limited to considering the specific racketeering acts that are
15 charged against the defendant; rather, in addition to
16 considering these acts you may also consider the nature of the
17 enterprise, and the other unlawful activities of the
18 enterprise and its members viewed in their entirety, including
19 both charged and unlawful activities.

20 I am now going to explain to you what the law is
21 that governs the 14 racketeering acts that the government has
22 alleged. You must reach separate verdicts of proven or not
23 proven with regard to each of these alleged racketeering acts.
24 They are on the verdict sheet under Count One.

25 Racketeering Act One. This act, Racketeering Act

Jury Charge

4644

1 One, charges the defendant with bribery. And this is how it
2 reads:

3 On or about August 30th, 1994, within the Northern
4 District of Illinois, the defendant, Robert Sylvester Kelly,
5 together with others, did knowingly and intentionally cause
6 another individual to promise and tender to a public officer
7 and public employee property, to wit: United States currency,
8 that such public officer and public employee was not
9 authorized by law to accept, with the intent to influence the
10 performance of an act related to the employment and function
11 of a public officer and public employee, to wit: the creation
12 of a fraudulent identification document for Aaliyah Haughton,
13 in violation of Illinois Criminal Code Sections 5/33-1(a) and
14 5/5-1.

15 Illinois Criminal Code Section 5/33-1(a) provides,
16 in relevant part, that:

17 A person commits bribery when... with intent to
18 influence the performance of any act related to the employment
19 and function of any public officer [or] public employee... he
20 promises or tenders to that person any property which he is
21 not authorized by law to accept.

22 The government must prove beyond a reasonable doubt
23 each of the following elements:

24 First, that the person the defendant or one for
25 whose conduct he is legally responsible sought to influence

Jury Charge

4645

1 was a public officer or public employee.

2 Second, that the defendant or one for whose conduct
3 he is legally responsible caused another person to promise or
4 tender property to the person the defendant sought to
5 influence.

6 And third, that the defendant or one for whose
7 conduct he is legally responsible did so with the intent to
8 influence the performance of any act related to that person's
9 employment or function as a public officer or public employee.

10 In the alternative, the government may also prove
11 that the defendant committed the crime alleged in Racketeering
12 Act One, if it proves beyond a reasonable doubt each of the
13 following two elements:

14 First, that the defendant or one for whose conduct
15 he is legally responsible promised or tendered property to
16 another individual.

17 Second, that the defendant or one for whose conduct
18 he is legally responsible did so with the intent to cause
19 another individual to influence the performance of any act
20 related to the employment or function of a public employee or
21 a public officer.

22 "Public officer" means a person who is appointed to
23 an office which is established, and the qualifications and
24 duties of which are prescribed by statute, to discharge a
25 public duty for any public political subdivision of the State

Jury Charge

4646

1 of Illinois. The term "public employee" is a person who is
2 authorized to perform an official function on behalf of, and
3 is paid by the State of Illinois or any political subdivision
4 thereof. The term "tender" means any delivery or proffer made
5 with the requisite intent. A mere offer or promise with the
6 requisite intent is not sufficient to constitute bribery under
7 Illinois law. United States currency constitutes property
8 under Illinois law.

9 Now I am going to read you these Illinois Criminal
10 Code sections.

11 First, 5/5-1 or 55-1 provides, in relevant part,
12 that:

13 A person is responsible for the conduct which is an
14 element of an offense if the conduct is either that of the
15 person himself, or that of another and he is legally
16 accountable for such conduct as provided in section 5-2, or
17 both.

18 Section 5-2 provides, in relevant part, a person is
19 legally accountable for the conduct of another when:

20 (b) the statute defining the offense makes him
21 accountable; or

22 (c) either before or during the commission of an
23 offense, and with the intent to promote or facilitate that
24 commission, he solicits, aids, abets agrees, or attempts to
25 aid such other person in planning or committing the offense.

Jury Charge

4647

1 However, a person is not so accountable, unless the statute
2 defining the offense otherwise, if:

3 (1) he is a victim of the offense that was
4 committed;

5 (2) the offense is so defined that his conduct was
6 inevitably incident to its commission; or

7 (3) before the commission of the offense, he
8 terminates his effort to promote or facilitate that commission
9 and does one of the following: wholly deprives his prior
10 efforts of effectiveness in such commission, or gives timely
11 warning to the proper law enforcement authorities, or
12 otherwise makes proper effort to prevent the commission of the
13 offense.

14 With respect to Racketeering Act One, the defendant
15 is legally responsible for the conduct of another person when,
16 either before or during the commission of the offense, and
17 with the intent to promote or facilitate the commission of the
18 offense, the defendant knowingly solicits, aids, abets, agrees
19 to aid, or attempts to aid the other person in planning or
20 committing the offense.

21 Actual physical presence at the commission of a
22 crime is not a requirement for legal responsibility.

23 Intent to promote or facilitate the commission of
24 the offense may be shown by evidence that the defendant shared
25 a criminal intent of the person who directly committed the

Jury Charge

4648

1 offense or evidence that there was a common criminal design.

2 A person who is legally responsible for another
3 person's conduct may be convicted for the offense committed by
4 the other person even though the other person, who it is
5 claimed committed the offense, has not been prosecuted or
6 convicted of the offense.

7 The second racketeering act charges the defendant
8 with sexual exploitation of a child. And it reads:

9 In or about and between may 1999 and October 15,
10 1999, both dates being approximate and inclusive, within the
11 Northern District of Illinois, the defendant Robert Sylvester
12 Kelly, together with others, did knowingly and intentionally
13 employ, use, persuade, induce, entice and coerce a minor, to
14 wit: the person who testified as "Stephanie," to engage in
15 sexually explicit conduct for the purpose of producing one or
16 more visual depictions of such conduct, which visual
17 depictions were produced using materials that had been mailed,
18 shipped, and transported in interstate and foreign commerce,
19 in violation of Title 18, United States Code, Sections 2251(a)
20 and 2. I'm sorry, all right.

21 Now, under Title 18 of the United States Code,
22 Section 2251:

23 A person who employs, uses, persuades, induces,
24 entices, or coerces any minor to engage in... any sexually
25 explicit conduct for the purpose of producing any visual

Jury Charge

4649

1 depiction of that conduct, shall be punished... if such person
2 knows or has a reason to know that the visual depiction will
3 be transported in interstate or foreign commerce or mailed if
4 that visual depiction was produced using materials that had
5 been mailed, shipped, or transported in interstate or foreign
6 commerce by any means, including by computer, or if the visual
7 depiction has actually been transported in interstate or
8 foreign commerce or mailed.

9 To prove that the defendant committed this
10 racketeering act, the government must prove the following
11 three elements beyond a reasonable doubt:

12 First: That Stephanie was under the age of 18 at
13 the time of the acts alleged in the indictment.

14 Second: That the defendant used, employed,
15 persuaded, induced, or enticed Stephanie to take part in
16 sexually explicit conduct for the purpose of producing or
17 transmitting a visual depiction of that conduct.

18 Third: That the visual depiction was produced using
19 materials that had been mailed, shipped, or transported in and
20 affecting interstate and foreign commerce.

21 As to the first element, the government must prove
22 beyond a reasonable doubt that Stephanie was less than
23 18 years old at the time of the acts alleged in the
24 indictment. The government does not need to prove that the
25 defendant knew that Stephanie was less than 18 years old.

Jury Charge

4650

1 As to the second element, the words "used,"
2 "employed," "persuaded," "induced," and "enticed" are words of
3 common usage. You should interpret these words by using your
4 own common sense. The words "persuade," "induce" and "entice"
5 are, in effect, synonyms that convey the idea of leading or
6 moving another person by persuasion as to some action, state
7 of mind, et cetera, or to bring about, produce or cause.

8 A "visual depiction" includes any photograph, film,
9 video or picture, including undeveloped film and videotape,
10 data stored on a computer disc or by electronic means which is
11 capable of conversion into a visual image or data that is
12 capable of conversion into a visual image that has been
13 transmitted by any means. A visual depiction includes a
14 digitally recorded photograph or video.

15 "Sexually explicit conduct" means, among other
16 things, actual or simulated sexual intercourse, including
17 genital-genital, oral-genital, anal-genital, or oral-anal,
18 whether between persons of the same or opposite sex;
19 masturbation or lascivious exhibitions of the genitals or
20 pubic area of any person.

21 The term "lascivious exhibition" means a depiction
22 that displays the genitals or pubic area of a person in order
23 to excite lustfulness or sexual stimulation in the viewer.
24 Not every exposure of the genitals or pubic area constitutes
25 lascivious exhibition. In deciding whether a particular

Jury Charge

4651

1 depiction constitutes lascivious exhibition, you should
2 consider the following:

3 Whether the focal point of the visual depiction is
4 of the minor's genitals or pubic area or whether there is some
5 other focal area.

6 Whether the setting of the visual depictions makes
7 it appear to be sexually suggestive, for example, in a place
8 or pose generally associated with sexual activity.

9 Whether the minor is displayed in an unnatural pose
10 or in inappropriate attire, considering the minor's age.

11 Whether the minor is fully or partially clothed or
12 nude, although nudity is not in and of itself lascivious.

13 Whether the visual depiction suggests sexual coyness
14 or a willingness to engage in sexual activity.

15 Whether the visual depiction was intended or
16 designed to elicit a sexual response from the viewer.

17 It is not required that a visual depiction include
18 all of these factors. The importance that you give to any one
19 factor is up to you to decide.

20 While the government must prove that the defendant
21 acted with the purpose of producing a sexually explicit visual
22 depiction, the government does not need to prove that a visual
23 depiction of sexually explicit conduct was actually produced.
24 In deciding whether the government has proven that the
25 defendant had acted for the purpose of producing or

Jury Charge

4652

1 transmitting a visual depiction of sexually explicit conduct,
2 you may consider all of the evidence considering the
3 defendant's conduct.

4 Whether or not a minor consented to engage in
5 sexually-explicit conduct is irrelevant, as the consent or
6 voluntary participation of a minor is not a defense to the
7 charge.

8 As to the third element of the underlying crime, I
9 will further define what it means for a depiction to be
10 produced using materials that have been mailed, shipped or
11 transported in and affecting interstate and foreign commerce.
12 If a visual depiction of sexually explicit conduct, as I
13 defined it, is recorded or stored on a device that was made
14 either outside the state where the visual depiction was made
15 or in a foreign country, then that is enough to satisfy the
16 interstate commerce element. It is not necessary that the
17 government prove that the defendant knew that the defense had
18 been made outside of the state where the visual depiction was
19 made in a foreign country.

20

21 (Continued on the next page.)

22

23

24

25

Charge of the Court

4653

1 (Continuing.)

2 THE COURT: Racketeering Act Three. This
3 Racketeering Act charges the defendant with kidnap and it
4 reads as follows:

5 In or about and between 2003 and 2004, both dates
6 being approximate and inclusive, within the Northern District
7 of Illinois and elsewhere, the defendant, Robert Sylvester
8 Kelly, together with others, knowingly and intentionally
9 secretly confined an individual, to wit; the person who
10 testified as Sonja, against her will, and induced Sonja by
11 deceit and enticement to go from one place to another with the
12 intent secretly to confine her against her will in violation
13 of Illinois Criminal Code Sections 5/10-1. That section
14 provides, in pertinent part, kidnapping occurs when a person
15 knowingly and secretly confines another against his will, or
16 by deceit and enticement induces another person to go from one
17 place to another with intent secretly to confine that person
18 against that person's will.

19 The Government must prove beyond a reasonable doubt
20 each of the following elements:

21 That the defendant or one for whose conduct he is
22 legally responsible acted knowingly.

23 That the defendant or one for whose conduct he is
24 legally responsible secretly confined or caused another person
25 to secretly confine Sonja against her will, or by deceit or

Charge of the Court

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1 enticement induced Sonja to go from one place to another, and
2 that when the defendant or one for whose conduct he is legally
3 responsible did so, he or one for whose conduct he is legally
4 responsible, intended secretly to confine Sonja against her
5 will.

6 Confinement is established where the victim has been
7 clearly enclosed within something, most commonly, a house or a
8 car. The secret confinement element of kidnapping may be
9 shown by proof of the secrecy of either the confinement or the
10 place of confinement. To put it another way, confinement is
11 secret when it serves to isolate or insulate the victim from
12 meaningful contact or communication with the public, that is,
13 when the confinement is in a place or manner that makes it
14 unlikely that members of the public will know or learn of the
15 victim's unwilling confinement within a reasonable period of
16 time.

17 I previously explained to you with respect to the
18 first Racketeering Act, the circumstances under which someone
19 is legally accountable for the conduct of another person under
20 the Illinois Criminal Code, and that instruction applies here.

21 Racketeering Act Four. This Racketeering
22 Act alleges that the defendant committed two separate
23 violations of the Mann Act, one related to transportation and
24 the other involving coercion or enticement. Thus,
25 Racketeering Act Four has two parts, and you will render

Charge of the Court

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1 separate verdicts on each part. If you find that the
2 defendant committed either or both of these crimes, you must
3 find that the Government has proven Racketeering Act Four.

4 So, 4A, Racketeering 4A is entitled Transportation.
5 And the indictment reads like this:

6 In or about and between 2003 and 2004, both dates
7 being approximate and inclusive, within the Northern District
8 of Illinois and elsewhere, the defendant, Robert Sylvester
9 Kelly, together with others, did knowingly and intentionally
10 transport an individual, Sonja, in interstate commerce, with
11 the intent that the individual engage in sexual activity for
12 which a person can be charged with a criminal offense.
13 Violations of Illinois Criminal Code Sections 5/12 to
14 16(a)(6), and that's effective as of 2002; aggravated criminal
15 sexual abuse, 5/12, 16(a)(7), also effective 2002; aggravated
16 criminal sexual abuse; and 5/12 15(a)(2), which is criminal
17 sexual abuse, in that Kelly engaged in sexual conduct with
18 Sonja, to wit; directly touching and fondling Sonja's sex
19 organs for the purpose of his sexual gratification during the
20 commission of a kidnapping of Sonja, knowing that Sonja was
21 unable to give knowing consent; as part of the same course of
22 conduct as delivery of a controlled substance to Sonja,
23 knowing that Sonja was unable to give knowing consent and
24 knowing that Sonja was unable to give knowing consent in
25 violation of Title 18, United States Code, Sections 2421 and 2.

Charge of the Court

4656

1 The indictment charges the defendant with violating
2 Section 2421 of Title 18 of the United States Code. That
3 section provides, in relevant part:

4 Whoever knowingly transports any individual in
5 interstate commerce with intent that that person engage in any
6 sexual activity for which a person can be charged with a
7 criminal offense, shall be guilty of a crime.

8 In order to prove the defendant's guilt of
9 transporting an individual for the purpose of engaging in
10 illegal sexual activity, the Government must prove the
11 following elements beyond a reasonable doubt:

12 First, that the defendant knowingly transported or
13 caused the transportation of Sonja in interstate commerce as
14 alleged in the indictment.

15 Second, that the defendant transported Sonja with
16 the intent that he would engage in sexual activity with Sonja,
17 and that for that sexual activity a person can be charged with
18 a criminal offense.

19 The first element that the Government must prove
20 beyond a reasonable doubt is that the defendant knowingly
21 transported or caused the transportation of Sonja in
22 interstate commerce as alleged in the indictment. This means
23 that the Government must prove that the defendant knew both
24 that he was transporting or causing the transportation of
25 Sonja, and that he was transporting Sonja or causing her

Charge of the Court

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1 transportation in interstate commerce. To act knowingly, that
2 means to act voluntarily and intentionally, and not because of
3 any accident, mistake or other innocent reason.

4 Interstate commerce, as I've said before, is
5 movement between one state and another. The Government does
6 not have to prove that the defendant personally transported
7 Sonja across a state line. It's enough to satisfy this
8 element that the defendant was actively engaged in or caused
9 the making of the travel arrangements, including by purchasing
10 or causing the purchase of the ticket necessary for the person
11 to travel as planned.

12 The second element that the defendant must prove
13 beyond a reasonable doubt is that the defendant transported or
14 caused Sonja's transportation with the intent that he would
15 engage in sexual activity with her, and that a person could be
16 charged with a criminal offense for that activity. Direct
17 proof of a person's intent, as I said before, is almost never
18 available. It would be the rare case that someone wrote or
19 stated that as of a given time he committed a particular act
20 with a particular intent. That kind of direct proof is not
21 required. The ultimate act of intent, though it's subjective,
22 may be established by circumstantial evidence, based on a
23 defendant's outward manifestations, his words, his conduct and
24 his acts, and all of the surrounding circumstances shown by
25 the evidence and the rational or logical evidence that you can

Charge of the Court

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1 draw from them.

2 In order to establish this element, it is not
3 necessary that the Government prove that engaging in illegal
4 sexual activity was the only purpose for crossing the state
5 line. A person may have several different purposes or motives
6 for such travel, and each may prompt in varying degrees the
7 act of making the journey. The Government must prove beyond a
8 reasonable doubt, however, that a significant or motivating
9 purpose of the travel across a state line was that the
10 defendant would engage in illegal sexual activity with Sonja.
11 In other words, that illegal activity on can't have been
12 merely incidental to the trip.

13 All right, the indictment charges that the defendant
14 transported Sonja with the intent that she engage in sexual
15 activity that violates three Illinois criminal laws. The
16 first is under Illinois Criminal Code Section 5/12-16(a)(6),
17 aggravated sexual abuse; the second is 5/12-16(a)(7),
18 aggravated criminal sexual abuse. I guess they are both that.
19 Yes, aggravated criminal sexual abuse and 5/12-16(a)(7),
20 aggravated criminal sexual abuse, and 5/12-15(a)(2), which is
21 criminal sexual abuse.

22 If you find that the conduct for which the defendant
23 transported or caused Sonja's transportation violated any of
24 these three laws, then you must find that this element is
25 satisfied, but you have to be unanimous as to which law was

Charge of the Court

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1 violated. So, I am going to tell you about each of those
2 three laws.

3 First, Section 5/12-15(a) provides that a ey person
4 commits criminal sexual abuse, which is a crime, if he commits
5 an act of sexual conduct and the accused knew that the victim
6 was unable to understand the nature of the act or was unable
7 to give knowing consent. So, the Government has to prove the
8 following two elements beyond a reasonable doubt:

9 First, that the defendant committed a sexual act
10 against Sonja or on Sonja.

11 Second, that the defendant knew that Sonja was
12 unable to understand the nature of the act or give knowing
13 consent to the act.

14 Sexual conduct means any intentional or knowing
15 touching or fondling of the victim or the accused, either
16 directly or through clothing, of the sex organs, anus or
17 breast of the victim or the accused, or any transfer or
18 transmission of semen by the accused upon any part of the
19 clothed or unclothed body of the victim for the purpose of
20 sexual gratification or arousal of the victim or the accused.

21 The next code section is aggravated sexual abuse,
22 and that's under Illinois Code Section 5/12-16(a)(6). A
23 person is guilty of that crime if he commits criminal sexual
24 abuse as I just explained to you, and the criminal sexual
25 abuse was perpetrated during the course of the commission or

Charge of the Court

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1 attempted commission of any other felony by the accused. I
2 charge you that kidnapping is a felony. I've already defined
3 that, and you should apply that definition here.

4 The next section of the Criminal Code is
5 5/12-16(a)(7), and that provides that a person commits
6 aggravated sexual abuse if he commits criminal sexual abuse,
7 as I just explained to you, and the accused delivered by
8 injection, inhalation, ingestion, transfer or possession or
9 any other means to the victim without her consent or by threat
10 or deception, or for other than medical purposes, any
11 controlled substance.

12 Now, Racketeering Act 4B is coercion. And this is
13 what the indictment says:

14 In or about and between 2003 and 2004, within the
15 Northern District of Illinois and elsewhere, the defendant,
16 together with others, did knowingly and intentionally
17 persuade, induce, entice and coerce an individual, Sonja, to
18 travel in interstate commerce to engage in sexual activity for
19 which a person can be charged with a criminal offense, to wit:
20 Violations of Illinois Criminal Code Sections 5/12-16(a)(6),
21 that's aggravated criminal sexual abuse.

22 I am not going to read all these statutes, I am just
23 going to tell you what the crimes are.

24 Aggravated criminal sexual abuse and criminal sexual
25 abuse, in that Kelly engaged in sexual conduct with Sonja, to

Charge of the Court

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1 wit: Directly touching and fondling Sonja's sex organs for
2 the purpose of his sexual gratification during the commission
3 of a kidnapping of Sonja, knowing that Sonja was unable to
4 give knowing consent and as part of the course of conduct,
5 that same course of conduct, as delivery of a controlled
6 substance to Sonja, knowing that she was unable to give
7 knowing consent and knowing that she was unable to give
8 knowing consent in violation of Title 18, United States Code,
9 Sections 2422(a) and 2.

10 The indictment also charges the defendant with
11 violating that section of the United States Code, Title 18,
12 which provides:

13 Whoever knowingly persuades, induces, entices or
14 coerces any individual to travel in interstate commerce to
15 engage in any sexual activity for which a person can be
16 charged with a criminal offense shall be guilty of a crime.

17 In order to prove the defendant guilty of this
18 crime, the Government must prove each of the following
19 elements beyond a reasonable doubt:

20 First, that the defendant knowingly persuaded,
21 induced, enticed or coerced Sonja to travel in interstate
22 commerce as alleged in the indictment.

23 Second, that Sonja traveled in interstate commerce.

24 And third, that the defendant acted with the intent
25 that he would engage in illegal sexual activity with Sonja.

Charge of the Court

4662

1 With respect to the third element, the indictment
2 charges that the defendant acted with the intent to engage in
3 illegal sexual activity in violation of three different state
4 laws. I have already instructed you on those provisions, and
5 you should apply those instructions here.

6 If you find that the defendant acted with the intent
7 that he would engage in conduct that violated any of those
8 three laws, then you must find that this element is satisfied.
9 But, again, you have to be unanimous about which law he acted
10 with the intent to violate.

11 Moving on to Racketeering Act Five.

12 This act alleges that the defendant, using an
13 interstate facility, enticed or coerced Jerhonda to engage in
14 illegal sexual activity in violation of the Mann Act. The
15 indictment reads as follows:

16 In or about and between May 2009 and January 2010,
17 both dates being approximate and inclusive, within the
18 Northern District of Illinois and elsewhere, the defendant,
19 together with others, did knowingly and intentionally
20 persuade, induce, entice and coerce an individual who had not
21 yet attained the age of 18 years, to wit, Jerhonda, to engage
22 in sexual activity for which a person can be charged with a
23 criminal offense.

24 And these are violations of Illinois Criminal Code
25 Section 5/12-16(d), that's aggravated criminal sexual abuse,

Charge of the Court

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1 that Kelly engaged in sexual penetration of Jerhonda who was
2 under 17 years of age, while he was more than five years older
3 than Jerhonda, using one or more facilities and means of
4 interstate commerce in violation of Title 18, United States
5 Code, Sections 2422(b) and 2.

6 The indictment charges that the defendant violated
7 this section of the United States Code, which provides in
8 relevant part:

9 Whoever, using any facility or means of interstate
10 commerce, knowingly persuades, induces, entices or coerces any
11 person who has not attained the age of 18 years, to engage in
12 any sexual activity for which any person can be charged with a
13 criminal offense shall be guilty of a crime.

14 In order to prove that the defendant is guilty of
15 using the facility of interstate commerce to persuade or
16 induce or entice or coerce a person to engage in illegal
17 sexual activity, the Government must prove each of these
18 elements beyond a reasonable doubt:

19 First, that the defendant used a facility of
20 interstate commerce.

21 Second, that the defendant knowingly persuaded or
22 induced or enticed or coerced Jerhonda to engage in sexual
23 activity.

24 Third, that the sexual activity would violate
25 Illinois law.

Charge of the Court

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1 Fourth, that Jerhonda was less than 18 at the time
2 of the acts alleged in the indictment.

3 The first element that the Government must prove
4 beyond a reasonable doubt is that the defendant used a
5 facility of interstate commerce. Transmission of
6 communications by telephone constitutes the use of a facility
7 of interstate commerce regardless of whether the communication
8 actually crossed a state line, but you must find beyond a
9 reasonable doubt that the specific communication in question
10 was transmitted by the telephone.

11 The second element that the Government must prove
12 beyond a reasonable doubt is that the defendant knowingly
13 persuaded or induced or enticed or coerced Jerhonda to engage
14 in sexual activity.

15 And those words persuade, induce, entice and coerce,
16 you should give them their ordinary meanings.

17 The third element that the Government must prove
18 beyond a reasonable doubt is that the sexual activity would
19 violate Illinois law. The indictment alleges that the
20 defendant persuaded Jerhonda to engage in sexual activity,
21 which constitutes aggravated sexual abuse in violation of
22 Illinois law. To sustain that charge, aggravated criminal
23 sexual abuse, the Government has to prove the following three
24 elements beyond a reasonable doubt:

25 That the defendant committed an act of sexual

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1 penetration with Jerhonda; that Jerhonda was at least 13 years
2 of age, but under 17 years of age when the act was committed;
3 and that the defendant was at least five years older than
4 Jerhonda.

5 Sexual penetration means any contact, however
6 slight, between the sex organs or anus of one person by an
7 object, the sex organ, mouth or anus of another person, or any
8 intrusion, however slight, by any part of the body of one
9 person or of any animal or object into the sex organ or anus
10 of another person, including, but not limited to, cunnilingus,
11 fellatio or anal penetration. Evidence of emission of semen
12 is not required to prove sexual penetration. It is a defense
13 to the charge of aggravated criminal sexual abuse that the
14 defendant reasonably believed Jerhonda to be 17 years of age
15 or older at the time the acts of sexual penetration were
16 committed.

17 The fourth element that the Government must prove
18 beyond a reasonable doubt is that Jerhonda was less than 18 at
19 the time of the acts alleged in the indictment.

20 Racketeering Act Six alleges that the defendant
21 committed forced labor of Jerhonda, and the indictment reads
22 as follows:

23 In or about and between May of 2009 and
24 January 2010, both dates being approximate and inclusive,
25 within the Northern District of Illinois and elsewhere, the

Charge of the Court

4666

1 defendant, together with others, knowingly and intentionally,
2 obtained the labor and services of a person, Jerhonda, by
3 means of force, threats of force, physical restraint and
4 threats of physical restraint to Jerhonda or another person by
5 means of serious harm and threats of serious harm to Jerhonda
6 or another person; and by means of a scheme, plan and pattern
7 intended to cause that person to believe that if that person
8 did not perform such labor and services, that person would
9 suffer serious harm and physical restraint and a combination
10 of such means, in violation of Title 18, United States Code,
11 Sections 1589(a) and 2.

12 The relevant statute reads as follows:

13 Whoever knowingly obtains the labor and services of
14 another person by means of force, threats of force, physical
15 restraint or threats of physical restraint to that person or
16 another person, by means of serious harm or threats of serious
17 harm to that person or another person, or by means of any
18 scheme, plan, pattern, intended to cause the person to believe
19 that if that person did not perform such labor or services,
20 that person or another person would suffer serious harm or
21 physical restraint, shall be guilty of a crime.

22 The Government must prove the following three
23 elements beyond a reasonable doubt to prove that the defendant
24 committed this Racketeering Act.

25 The first is the defendant obtained the labor or

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1 services of Jerhonda.

2 The second is that the defendant did so through one
3 of the following prohibited means:

4 Through threats of serious harm to or physical
5 restraint against Jerhonda or any other person, or through its
6 scheme, plan, pattern, intended to cause Jerhonda to believe
7 that not performing would result in serious harm to or
8 physical restraint against Jerhonda or any other person.

9 The third element is that the defendant acted
10 knowingly.

11 The first element that they must prove is that the
12 defendant obtained Jerhonda's labor and services. To obtain
13 means to acquire, control or possess, even if only for a short
14 period. Labor means the expenditure of physical or mental
15 effort. Services means conduct or performance that assists or
16 benefits someone.

17 The Government does not have to prove that Jerhonda
18 performed work for defendant in the economic sense, although
19 that would satisfy this element. Labor or services can
20 include, but is not limited to, sexual services. All the
21 Government must prove is that Jerhonda provided labor services
22 as I just defined them.

23 As to the second element, if you find that the
24 defendant obtained the labor or services of Jerhonda, then you
25 have to determine whether he did so through one of the two

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1 prohibited means. That is, either through threats of serious
2 harm to or physical restraint against a person, or through a
3 scheme, plan or pattern intended to cause the person to
4 believe that serious harm would result if she did not perform
5 the labor or services required of her.

6 In order to find that this element has been
7 satisfied, you must find beyond a reasonable doubt that at
8 least one of the prohibited means that I just mentioned was
9 used to obtain Jerhonda's labor or services. Some of the
10 terms that you will be considering in determining whether this
11 element of Racketeering Act Six has been satisfied, include
12 the term serious harm. That includes both physical and
13 non-physical types of harm, including psychological,
14 financial, or reputational harm. A threat of serious harm,
15 therefore, does not have to involve any threat of physical
16 violence. It includes improper threats of consequences,
17 whether physical or non-physical, that are sufficient under
18 all the surrounding circumstances to compel or coerce a
19 reasonable person of the same background and in the same
20 circumstance as Jerhonda to provide or to continue providing
21 labor or services in order to avoid that harm. In considering
22 whether a threat of harm is sufficient to compel or coerce an
23 alleged victim's services, you may also consider the
24 defendant's conduct, as well as Jerhonda's special
25 vulnerabilities, if any. In this regard, you may find that

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1 not all persons are of the same courage or firmness. You may
2 consider, for example, Jerhonda's age, background, physical
3 and mental condition, experience, education, socio-economic
4 status, and any inequalities between Jerhonda and the
5 defendant with respect to these considerations, including
6 their relative stations, in life, among other things. To put
7 it simply, you may ask whether Jerhonda was vulnerable in some
8 way so that the defendant's actions, even if not enough to
9 compel another person to provide labor or services, were
10 enough to compel Jerhonda to provide labor or services.

11 You should give the ordinary meaning to these words,
12 scheme, plan and pattern. The scheme, plan or pattern does
13 not have to involve actual threats of serious harm, but may
14 involve any other means, including deception or psychological
15 coercion used to cause the victim to reasonably believe that
16 she, her family, or any other person would suffer serious harm
17 if she refused to continue providing labor or services.

18 If you find that any of the two prohibited means
19 that I mentioned earlier was used, you then have to determine
20 whether the means was sufficient to cause Jerhonda reasonably
21 to believe that she had no choice, but to provide labor or
22 services to the defendant. In making that determination, you
23 may consider the cumulative effect on Jerhonda of the
24 defendant's conduct.

25 A few final things about this second element of

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4670

1 forced labor. To prove forced labor, the Government does not
2 need to link each of the threats allegedly made or actions
3 allegedly taken against Jerhonda to particular labor or
4 service tasks that she performed. If Jerhonda was threatened
5 with or suffered certain consequences in connection with the
6 services she rendered, either as punishment or as part of a
7 climate of fear that overcame her will and compelled her
8 service, that is sufficient to establish the second element of
9 the offense of forced labor.

10 The Government also does not have to prove physical
11 restraint, like chains, barbed wire or locked doors, in order
12 to establish the offense of forced labor. The fact that
13 Jerhonda may have had the opportunity to escape is irrelevant
14 if the defendant placed her in such fear or circumstances that
15 she did not reasonably believe that she could leave. A victim
16 who has been placed in such fear or circumstances is under no
17 affirmative duty to try to escape.

18 Finally, when you consider whether service performed
19 by someone was involuntary, I am instructing you that it is
20 not a defense to the crime of forced labor that the person
21 might have initially agreed voluntarily to render the service
22 or perform the labor. If a person willingly begins service or
23 labor, but later wants to withdraw and then is forced to
24 remain and perform the labor or services against her will by
25 threats of serious harm, or by a scheme, plan or pattern

Charge of the Court

4671

1 intended to cause her to believe that not performing the labor
2 or services will result in serious harm to her or someone
3 else, then her service becomes involuntary. Also, whether a
4 person is paid a salary or a wage does not determine the
5 question of whether that person has been held in forced labor.
6 In other words, if someone is compelled to do labor against
7 her will by any one of the means prohibited by the forced
8 labor statute, that service is involuntary, even if she is
9 paid or compensated for the labor or services.

10 The third element I have already described to you,
11 that requires that the defendant acted knowingly.

12 Racketeering Act Seven charges that the defendant
13 sexually exploited Jerhonda, and the indictment reads as
14 follows:

15 In or about and between May 2009 and January 2010,
16 both dates being approximate and inclusive, within the
17 Northern District of Illinois and elsewhere, the defendant,
18 together with others, knowingly and intentionally employed,
19 used, persuaded, induced, enticed and coerced a minor,
20 Jerhonda, to engage in sexually explicit conduct for the
21 purpose of producing one or more visual depictions of such
22 conduct, which visual depictions were produced using material
23 that had been mailed, shipped and transported in and affecting
24 interstate and foreign commerce, in violation of Title 18
25 United States Code, Sections 2251(a), 2251(e) and 2.

Charge of the Court

4672

1 To prove that the defendant committed this
2 Racketeering Act, the Government must prove the following
3 three elements beyond a reasonable doubt:

4 First, that Jerhonda was under the age of 18 at the
5 time of the acts alleged in the indictment.

6 Second, that the defendant used, employed,
7 persuaded, induced or enticed Jerhonda to take part in
8 sexually explicit conduct for the purpose of producing or
9 transmitting a visual depiction of that conduct.

10 Third, that the visual depiction was produced using
11 materials that had been mailed, shipped or transported in and
12 affecting interstate and foreign commerce.

13 I have already instructed you on all of these
14 elements in connection with Racketeering Act Two, and those
15 instructions apply to this Racketeering Act as well.

16 Racketeering Act Eight alleges that the defendant
17 committed two different violations of the Mann Act, one
18 related to transportation and the other involving coercion or
19 enticement.

20 So, this Racketeering Act also has two parts and you
21 will render separate verdicts on each part.

22 If you find that the defendant committed either or
23 both of these two crimes, you must find that the defendant has
24 proven Racketeering Act Eight.

25 8A is transportation, and here is what the

Charge of the Court

4673

1 indictment says:

2 And from now on I am not going to include that *dates*
3 *being inclusive*, that applies to everything. I don't think
4 there is any need to keep saying it.

5 On or about and between April 28th of 2015 and
6 May 1st, 2015, within the Central District of California, the
7 Northern District of California and elsewhere, the defendant,
8 together with others, knowingly and intentionally transported
9 an individual, Jane, in interstate commerce, with the intent
10 that Jane engage in sexual activity for which a person can be
11 charged with a criminal offense, to wit: Violations of
12 California Health and Safety Code, Section 120290, which is
13 willful exposure of a communicable disease, in that Kelly
14 engaged in unprotected sexual intercourse with Jane without
15 first informing Jane that he had contracted herpes and
16 obtaining her consent to sexual intercourse in these
17 circumstances in violation of Title 18, United States Code,
18 Sections 2421(a) and 2.

19 The indictment charges the defendant with violating
20 this section of the Code and that provides, the section
21 provides, in relevant part:

22 Whoever knowingly transports any individual in
23 interstate commerce with the intent that that person engage in
24 any sexual activity for which any person can be charged with a
25 criminal offense shall be guilty of a crime.

Charge of the Court

4674

1 In order to prove the defendant guilty of this
2 crime, the Government must prove beyond a reasonable doubt
3 each of the following elements:

4 First, that the defendant knowingly transported or
5 caused the transportation of Jane in interstate commerce as
6 alleged in the indictment.

7 Second, that the defendant transported or caused the
8 transportation of Jane with the intent that he would engage in
9 illegal sexual activity with Jane.

10 I have already instructed you on the elements of the
11 Mann Act transportation, and you should follow those
12 instructions here.

13 In this Racketeering Act, the illegal sexual
14 activity that is charged is a violation of California law.
15 Specifically, California Health and Safety Code
16 Section 120290. And under that law, any person who is
17 afflicted with any contagious, infectious or communicable
18 disease who willfully exposes himself or herself to another
19 person shall be punished. This is what the Government must
20 prove beyond a reasonable doubt:

21 First, that the defendant knew that he was afflicted
22 with any contagious and infectious and communicable disease.

23 Second, that the defendant exposed himself to Jane
24 by engaging in unprotected sexual activity with her.

25 Third, that the defendant acted willfully.

Charge of the Court

4675

1 And fourth, that the defendant did not inform Jane
2 that he had a contagious, infectious or communicable disease
3 and obtain her consent to expose himself in these
4 circumstances prior to engaging in the exposure.

5 A communicable disease is any disease that was
6 transferable through the exposure incident. With respect to
7 the third element, I have already defined this for you. I
8 think that's willfully, that means with knowledge of the
9 consequences or purposefully. It does not require that the
10 defendant intended to expose another person to a contagious or
11 infectious or communicable disease.

12 Racketeering Act 8B is coercion. The indictment
13 reads as follows:

14 On or about and between April 28th, 2015 and
15 May 2015, within the Central District of California, the
16 Northern District of California and elsewhere, the defendant,
17 together with others, knowingly and intentionally persuaded,
18 induced, enticed and coerced Jane to travel in interstate
19 commerce to engage in sexual activity for which a person can
20 be charged with a criminal offense.

21 Again, that's that Section 120290 of the California
22 Health and Safety Code, which is willful exposure of a
23 communicable disease, that's that Kelly engaged in unprotected
24 sexual intercourse with Jane without first informing her that
25 he had contracted herpes and getting her consent to sexual

Charge of the Court

4676

1 intercourse in these circumstances in violation of Title 18,
2 United States Code, Sections 2422(a) and 2.

3 That statute, which I think I have read before
4 reads:

5 That whoever knowingly persuades, induces, entices
6 or coerces any individual to travel in interstate commerce to
7 engage in any sexual activity for which a person can be
8 charged with a criminal offense shall be guilty of a crime.

9 Here is what the Government has to prove to
10 establish this crime beyond a reasonable doubt:

11 That the defendant knowingly persuaded, induced,
12 enticed or coerced Jane to travel in interstate commerce as
13 the indictment alleges.

14 Second, that Jane did travel in interstate commerce.

15 Third, that the defendant acted with the intent that
16 Jane would engage in illegal sexual activity.

17 I have already instructed you on the elements of
18 Mann Act coercion and enticement, and I have also instructed
19 you about the elements of the California Health and Safety
20 Code, and those instructions apply here.

21 Everybody okay? We're getting there.

22 Racketeering Act Nine charges that the defendant
23 committed four separate violations of the Mann Act, two
24 related to transportation and the other involving coercion or
25 enticement.

Charge of the Court

4677

1 It has four parts, and you will render separate
2 verdicts on each part. If you find that the defendant
3 committed any one or all of these four crimes, then you must
4 find that the Government has proven Racketeering Act Nine.

5 So, the first one is referred to on the verdict
6 sheet as Racketeering Act 9A, and the indictment reads as
7 follows:

8 In or about and between September 2015 and
9 October 2015, in the Eastern District of New York, the
10 Northern District of California and elsewhere, the defendant,
11 together with others, knowingly and intentionally transported
12 Jane in interstate commerce with the intent that Jane engage
13 in sexual activity for which a person can be charged with a
14 criminal offense, violations of California Penal Law
15 Section 261.5(a) and (c), which is unlawful sexual intercourse
16 with someone under 18, in that Kelly engaged in sexual
17 intercourse with Jane who was under 18 years old, while he was
18 more than three years older than Jane.

19 In order to prove the defendant guilty of
20 transporting a person for the purpose of engaging in illegal
21 sexual activity, the Government must prove each of the
22 following elements beyond a reasonable doubt:

23 That the defendant knowingly transported or caused
24 the transportation of Jane in interstate commerce; that's the
25 indictment alleges.

Charge of the Court

4678

1 And that the defendant transported Jane with the
2 intent that he would engage in sexual activity with her.

3 And that for that sexual activity, a person can be
4 charged with a criminal offense.

5 I have already instructed you about Mann Act
6 transportation and that instruction applies, but the second
7 element has to do with California law and charges that the
8 defendant violated California law by engaging in sexual
9 intercourse with Jane who was under 18, while he was more than
10 three years older than Jane. Under California law, any person
11 who engages in an act of unlawful sexual intercourse with a
12 minor who was more than three years younger than the
13 perpetrator is guilty of a crime.

14

15 (Continued on the following page.)

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Jury Charge

4679

1 THE COURT: Unlawful sexual intercourse is an act
2 of sexual intercourse accomplished with a person who is not a
3 spouse of the perpetrator if the person is a minor. A minor
4 is a person under 18, an adult is a person who is at least
5 18.

6 To prove a violation of this part of California
7 law, the Government must prove each of the following elements
8 beyond a reasonable doubt:

9 First, that the defendant had sexual intercourse
10 with Jane.

11 Second, that the defendant and Jane were not
12 married to each other at the time of the intercourse.

13 And third, at the time of the intercourse, Jane was
14 under the age of 18 and more than three years younger than
15 the defendant.

16 Sexual intercourse means any penetration, no matter
17 how slight, of the vagina or genitalia by the penis.
18 Ejaculation is not required. It is not a defense that Jane
19 may have consented to the intercourse.

20 The defendant is not guilty of this violation of
21 California law if he reasonably and actually believed that
22 Jane was 18 or older at the time of the charged intercourse.
23 The Government must prove beyond a reasonable doubt that the
24 defendant did not reasonably and actually believe that Jane
25 was at least 18 years old.

Jury Charge

4680

1 Racketeering Act Nine-B is coercion or enticement
2 and the indictment reads:

3 In or about and between September and October of
4 2015, the defendant, together with others, knowingly and
5 intentionally persuaded, induced, enticed, and coerced Jane
6 to travel in interstate commerce and to engage in sexual
7 activity for which a person can be charged with a criminal
8 offense.

9 That's violations of California Penal Law:
10 Unlawful sexual intercourse with a person under 18 in that
11 Kelly engaged in sexual intercourse with Jane who was under
12 18 while he was more than three years older than Jane in
13 violation of Title 18, United States Code, Sections 2422(a)
14 and 2.

15 The Government must prove each of the following
16 elements beyond a reasonable doubt:

17 That the defendant knowingly persuaded, induced,
18 enticed, or coerced Jane to travel in interstate commerce as
19 the indictment alleges.

20 That Jane travelled in interstate commerce.

21 That the defendant act with the intent that he
22 would engage in illegal sexual activity with Jane.

23 I have already instructed you on all of the -- on
24 the Mann Act as well as the California Penal Law sections and
25 those instructions apply here.

Jury Charge

4681

1 Racketeering Act 9C is coercion of a minor.

2 And this indictment reads almost identically to the
3 other racketeering acts. That it alleges between September
4 and October of 2015 in the Eastern District, the Northern
5 District of California, and elsewhere the defendant with
6 others knowingly and intentionally persuaded, enticed, and
7 coerced someone who had not attained the age of 18 years,
8 Jane, to engage in sexual activity for which a person can be
9 charged with a criminal offense.

10 That's those violations of California Penal Law
11 outlawing unlawful sexual intercourse with a person under 18
12 in that Kelly engaged in sexual intercourse with Jane who was
13 under 18 years old while he was more than three years older
14 than Jane using one or more facilities of interstate
15 commerce.

16 I've already read you that code, that section of
17 the United States Code, that's Section 2422(b), I don't think
18 it's necessary to read it again.

19 In order to prove the defendant guilty of this
20 racketeering act, the Government must prove each of the
21 following elements beyond a reasonable doubt.

22 That the defendant used a facility of interstate
23 commerce.

24 That the defendant knowingly persuaded or induced
25 or enticed or coerced Jane to engage in sexual activity.

Jury Charge

4682

1 That this sexual activity would violate California
2 law.

3 And that Jane was less than 18 years old at the
4 time of the acts alleged in the indictment.

5 The first element that the Government must prove
6 beyond a reasonable doubt is that the defendant used a
7 facility of interstate commerce.

8 I've already instructed you this is that
9 instruction that transmission of communications by the
10 telephone constitutes interstate commerce, but that you have
11 to find that the specific communication in question actually
12 was transmitted by the telephone.

13 The second element that the Government must prove
14 is that the defendant knowingly persuaded or induced or
15 enticed or coerced Jane to engage in sexual activity. And,
16 again, those words should be given their ordinary meanings.

17 The third element that the Government has to prove
18 beyond a reasonable doubt is that this sexual activity
19 violated California law. I've already told you about that
20 relevant California law and that applies here.

21 And finally, the Government must prove beyond a
22 reasonable doubt that Jane was 18 years old at the time of
23 the acts alleged in the indictment.

24 We're on it Racketeering Act 9D, also
25 transportation of a minor. Again, alleging that the

Jury Charge

4683

1 defendant transported Jane for the purpose of engaged in
2 illegal sexual activity.

3 And let me just check with the parties. I think
4 that reads exactly the same as the last, doesn't it?

5 MS. GEDDES: Just requires travel in interstate
6 commerce, and the other one required use of a facility. I
7 think this one is very similar but it's technically
8 different.

9 THE COURT: Well, then we'll read it. That's fine.
10 So in or about and between September 2015 and
11 October 2015 in the Eastern District of New York, the
12 Northern District of California, and elsewhere, the
13 defendant, together with others, knowingly and intentionally
14 transported Jane who had not reached the age of 18 in
15 interstate commerce with the intent that Jane engage in
16 sexual activity for which a person could be charged with a
17 criminal offense. That's those same violations of California
18 Penal Law. And that Kelly engaged in sexual intercourse with
19 Jane who is under 18 while he was more than three years older
20 than Jane.

21 And, again, this is Section 2423(a) of Title 18 of
22 the United States Code and that reads:

23 That a person who knowingly transports an
24 individual who has not attained the age of 18 in interstate
25 or foreign commerce with the intent that the individual

Jury Charge

4684

1 engage in any sexual activity where for which a person could
2 be charged with a criminal offense shall be guilty of a
3 crime.

4 These elements that the Government must prove
5 beyond a reasonable doubt are that:

6 First, that the defendant knowingly transported or
7 caused the transportation a minor in interstate or foreign
8 commerce.

9 Second, that the defendant transported or caused
10 the transportation of a minor with the intent that she would
11 engage in any sexual activity for which a person can be
12 charged with a criminal offense.

13 And third, that Jane was less than 18 at the time
14 of the acts alleged in the indictment.

15 I've already defined "knowingly" and "interstate or
16 foreign commerce," those instructions apply here. I've also
17 explained the law about transporting or causing the
18 transportation of another person. Those instructions also
19 apply.

20 Racketeering Act Ten alleges that the defendant
21 committed sexual exploitation of Jane and the indictment
22 reads as follows:

23 In or about and between September 2015 and
24 December 30th of 2015 within the Northern District of
25 California, the Northern District of Illinois, and elsewhere,

Jury Charge

4685

1 the defendant knowingly and intentionally employed, used,
2 persuaded, induced, enticed and coerced a minor, Jane, to
3 engage in sexually explicit conduct for the purpose of
4 producing one or more visual depictions of such conduct which
5 visual depictions were produced using materials that had been
6 mailed, shipped, and transported in and affecting interstate
7 and foreign commerce in violation of Sections 2251(a), (e),
8 and 2 of the United States Code.

9 Here's what the Government must prove to establish
10 the defendant's guilt beyond a reasonable doubt:

11 First, that Jane was under 18 at the time of the
12 acts alleged in the indictment.

13 Second, that the defendant used, employed,
14 persuaded, induced, or enticed Jane to take part in sexually
15 explicit conduct for the purpose of producing or trance
16 magistrate visual depiction of that conduct.

17 And third, that the visual depiction was to be
18 mailed or transported or transmitted in or effecting
19 interstate or foreign commerce or using a facility of
20 interstate and foreign commerce or produced using materials
21 that had been mailed, shipped, or transported in and
22 affecting interstate and foreign commerce.

23 I've already told you about these elements and
24 given you the instructions in connection with Racketeering
25 Act Two and those apply here.

Jury Charge

4686

1 Racketeering Act Eleven charges the defendant with
2 committing forced labor of Jane.

3 That the defendant indictment reads in pertinent
4 part:

5 That between April and, April 2015 and December of
6 2018 in the Northern District of Georgia, Northern District
7 of Illinois, and elsewhere, the defendant, together with
8 others, knowingly and intentionally obtained the labor and
9 services of Jane by means of force, physical restraint, and
10 threats of physical restraint to Jane or another person by
11 means of serious harm or threats of serious harm to Jane or
12 another person, and by means of a scheme, plan, or pattern
13 intended to cause that person to believe that if did not
14 perform the labor and services, she would suffer serious harm
15 and physical restraints and a combination of such means in
16 violation of Title 18, United States Code, Sections 1589(a)
17 and 2.

18 To prove that the defendant committed this act, the
19 Government has to prove three elements beyond a reasonable
20 doubt.

21 The first that the defendant obtained Jane's labor
22 or services.

23 And that the second is that he did so through one
24 of the following prohibited means, threats of serious harm to
25 or physical restraint against Jane or any other person or

Jury Charge

4687

1 through a scheme, plan, or pattern intended to cause Jane to
2 believe that not performing the labor or services would
3 result in serious harm to or physical restraint against Jane
4 or any other person.

5 And that the defendant acted knowingly.

6 I've already instructed you on the elements of
7 forced labor and those instructions apply here.

8 Racketeering Act Twelve alleges two separate
9 violations of Mann Act, one transportation and the other
10 involving coercion or enticement. So this racketeering act
11 like some of the others has two parts. You will render
12 separate verdicts on each part. If you find that the
13 defendant committed either or both of these two crimes, you
14 must find that the defendant has proven Racketeering Act
15 Twelve.

16 The first one is listed as 12A on the verdict sheet
17 and this alleges that the defendant transported Faith for
18 purposes of engaging in illegal sexual activity.

19 And the indictment reads in pertinent part:

20 On or about May 18th, within the Eastern District
21 of New York and elsewhere, the defendant, together with
22 others, knowingly and intentionally transported Faith in
23 interstate commerce with the intent that she engage in sexual
24 activity for which a person can be charged with a criminal
25 offense. That's violations of New York Penal Law

Jury Charge

4688

1 Section 120.20, this is a reckless endangerment, and New York
2 Public Health Law Section 2307 which is the knowing exposure
3 of infectious venereal disease in that Kelly engaged in
4 unprotected sexual intercourse with Faith without first
5 informing her that he had contracted herpes and obtaining her
6 consent to sexual intercourse in these circumstances in
7 violation of Title 18, United States Code, sections 2421(a)
8 and 2.

9 In order to prove the defendant guilty of this
10 crime, the Government has to prove the following beyond a
11 reasonable doubt:

12 That the defendant knowingly transported or caused
13 the transportation of Faith in interstate commerce as alleged
14 in the indictment.

15 And that he transported Faith with the intent that
16 he would engage in sexual activity with Faith.

17 And that for that sexual activity a person can be
18 charged with the criminal offense.

19 I've already instructed you about Mann Act
20 Transportation. That instruction applies here. For this
21 racketeering act, the indictment alleges that the defendant
22 violated two different state laws. Either or both are
23 sufficient to find that his conduct amounted to illegal
24 sexual activity, but you have to be unanimous as to which law
25 was violated.

Jury Charge

4689

1 So the indictment says that he as I read before
2 that he engaged in unprotected sexual activity, intercourse,
3 with Faith without first telling her that he had herpes, and
4 without obtaining her consent to intercourse. And it's
5 alleged to violate two sections of New York law. New York
6 Penal Law 120.20 and Public Health Law 2307.

7 So to prove a violation of Penal Law
8 Section 120.20, the Government has to prove the following
9 elements beyond a reasonable doubt:

10 The first is that the defendant recklessly engaged
11 in conduct.

12 And the Government is that the reckless conduct
13 must have created a substantial risk of "serious physical
14 injury."

15 A person recklessly engages in conduct that creates
16 of a substantial risk of physical injury to someone else when
17 he engages in conduct that creates a substantial and
18 unjustifiable risk of serious physical injury to another
19 person when he is aware of and consciously disregards that
20 risk, and when that risk is of such nature and degree that
21 disregard of it constitutes a gross deviation from the
22 standard of conduct that a reasonable person would observe in
23 the situation. The defendant's subjective intent is
24 irrelevant.

25 Serious physical injury means impairment of a

Jury Charge

4690

1 person's physical condition that creates a substantial risk
2 of death, or that causes death, or serious and protracted
3 disfigurement or protracted impairment of health or
4 protracted loss or impairment of the function of any bodily
5 organ.

6 The second law is New York Public Health Law
7 Section 2307 which reads that, "any person who knowing
8 himself or herself to be infected if an infectious venereal
9 disease has sexual intercourse with another shall be
10 punished.

11 And here's what the Government has to prove to
12 beyond a reasonable doubt to establish a violation of that
13 section.

14 First, that the defendant engaged in unprotected
15 sexual intercourse with Faith.

16 Second, that he knew that he was infected with an
17 infectious venereal disease which is herpes at the time that
18 he had sexual intercourse with Faith.

19 Third, that he did not inform Faith that he had
20 herpes and get her consent to engage in sexual intercourse
21 with him in these circumstances before he engaged in sexual
22 intercourse with her.

23 The second is Racketeering Act 12B, which is
24 coercion or enticement and that alleges that the defendant
25 coerced or enticed Faith or purposes of engaging in illegal

Jury Charge

4691

1 sexual activity.

2 The indictment says in relevant part that:

3 On or about May 18th of 2017, in the Eastern
4 District of New York and elsewhere, the defendant knowingly
5 and intentionally persuaded, induced, enticed, and coerced
6 Faith to travel in interstate commerce to engage in sexual
7 activity for which a person can be charged with a criminal
8 offense.

9 Those are the same New York laws, violations of the
10 Penal Law and the Public Health Law.

11 And in that Kelly engaged in unprotected sexual
12 intercourse with Faith without first informing her that he
13 had contracted herpes in getting her consent to sexual
14 intercourse in these circumstances in violation of Title 18,
15 United States Code, Sections 2422(a) and 2.

16 The elements that the Government must prove are
17 that:

18 The defendant knowingly persuaded and induced,
19 enticed or coerced Faith to travel in interstate commerce has
20 the indictment alleges.

21 That she did travel in interstate commerce.

22 And that the defendant acted with the intent that
23 he engaged in illegal sexual activity with her.

24 I've already instructed you on all of the elements
25 of these -- of this particular racketeering act. As I said,

Jury Charge

4692

1 the indictment provides that he violated two different state
2 laws either or both is enough to find that his conduct
3 amounted to illegal sexual activity, but again, you have to
4 be unanimous as to which law was violated.

5 Racketeering Act Thirteen is the forced labor of
6 Faith. And that count alleges that on January 13, 2018,
7 within the Central District of California and elsewhere, the
8 defendant, and others, knowingly and intentionally obtained
9 Faith's labor and services by means of force, threats of
10 force, physical restraint, and threats of physical restraint
11 to Faith or another person by means of serious harm and
12 threats of serious harm to Faith or to another person and by
13 means of a scheme, plan, and pattern intended to cause Faith
14 to believe that if she did not perform labor and services,
15 she would suffer serious harm and physical restraint and a
16 combination of such means in violation of Title 18, United
17 States Code, Sections 1589(a) and 2.

18 Here's what the Government has to prove:

19 That the defendant obtained the labor services of
20 Faith.

21 And that he did so through one of the following
22 prohibited means:

23 Through threats of serious harm to or physical
24 restraint against Faith or any other person, and through a
25 scheme, plan, or pattern intended to cause Faith to believe

Jury Charge

4693

1 that not performing this service or labor would result in
2 serious harm to or physical restraint against Faith or any
3 other person and that the defendant acted knowingly.

4 I've already given you the law that applies to
5 forced labor and that applies here.

6 We're on the last racketeering act.

7 This one alleges -- this one has two parts, also.
8 Two violations of the Mann Act. One transportation, and the
9 other coercion and enticement. Like some of those other
10 racketeering acts, there are two parts. You'll render
11 separate verdicts on each one. If you find that the
12 defendant committed either or both of these two crimes, you
13 must find that the Government has proven Racketeering Act
14 Fourteen.

15 14A alleges that the defendant transported Faith
16 for the purposes of engaging in illegal sexual activity and
17 the indictment reads in relevant part:

18 On February 2, 2018, in the Eastern District of New
19 York and elsewhere, the defendant, together with others,
20 knowingly and intentionally transported Faith in interstate
21 commerce with the intent that she engage in sexual activity
22 for which a person can be charged with a criminal offense.
23 Those are those two violations of New York law.

24 In that Kelly engaged in unprotected sexual
25 intercourse with Faith without first informing her that he

Jury Charge

4694

1 had contracted herpes and obtaining her consent to sexual
2 intercourse under these circumstances.

3 Like that other count, the Government has to prove
4 that the defendant knowingly transported or caused the
5 transportation of Faith in interstate commerce, and that he
6 transported her with the intent that he would engage in
7 sexual activity with her and that for that sexual activity, a
8 person can be charged with a crime.

9 Same instructions as the last one that I gave you.
10 Those apply here. Just bear in mind that either or both is
11 sufficient to find that the defendant's conduct amounted to
12 illegal sexual activity, but you have to be unanimous about
13 which law was violated.

14 The next, Racketeering Act 14B alleges that the
15 defendant coerced or enticed Faith for the purpose he engaged
16 in illegal sexual activity.

17 The indictment reads in pertinent part:

18 That on February 2, 2018, within the Eastern
19 District of New York and elsewhere, the defendant, together
20 with others, knowingly and intentionally persuaded, induced,
21 enticed, and coerced Faith to travel in interstate commerce
22 to engage in sexual activity for which a person can be
23 charged with a criminal offense. That's those two violations
24 of New York law. And in that Kelly engaged in unprotected
25 sexual intercourse with Faith without first informing her

Jury Charge

4695

1 that he had contracted herpes, and obtaining her consent to
2 having sexual intercourse in these circumstances.

3 In order to prove the defendant guilty of
4 persuading or inducing or enticing or coercing Faith to
5 travel for the purpose of engaging in illegal sexual
6 activity, the Government must prove beyond a reasonable
7 doubt.

8 First, that the defendant knowingly persuaded,
9 induced, enticed or coerced Faith to travel in interstate
10 commerce as the indictment alleges that did travel in
11 interstate commerce, and that the defendant acted with the
12 intent that he would engage in illegal sexual activity with
13 Faith.

14 All of those instructions that I've given you
15 before apply. And, again, that there are two different state
16 laws, you just have to either or both is enough, but you have
17 to be unanimous as to which law was violated.

18 All right. Now, the next -- the rest of the counts
19 are all Mann Act counts.

20 I want to see the counsel at the side for just a
21 minute, please, with the Court reporter.

22 (Continued on the next page.)
23
24
25

Sidebar

4696

1 (Sidebar conference held on the record in the
2 presence of the Court and counsel, out of the hearing of the
3 jury.)

4 THE COURT: As riveting as my presentation is, does
5 it require that I read every single one?

6 MS. GEDDES: No. I think you could simply say that
7 it's the exact same conduct except we don't have to prove any
8 enterprise or any of those other elements. Just have to
9 prove the Mann Act violation which I've already explained it
10 you.

11 THE COURT: Don't I have to give them dates?

12 MS. GEDDES: Yes. I think that you could say that
13 Count Two is the Mann Act violation charged in and I can tell
14 you to which racketeering act.

15 THE COURT: I'm not trying to be lazy, I'm just,
16 you know, getting tired of hearing the sound of my own voice
17 I think I got it.

18 MR. SCHOLAR: I think I agree. I think you are
19 doing fine.

20 THE COURT: Thanks.

21 (Sidebar discussion concludes.)

22 (Continued on the next page.)
23
24
25

Jury Charge

4697

1 (In open court.)

2 THE COURT: All right. The rest of these count I'm
3 going to summarize them. I know you'd rather really hear me
4 read every single word, but I really have instructed you on
5 these before. I don't mean for a minute to suggest that
6 they're not important, but I think you get the point.

7 So what I'm going to do is summarize some of them.

8 The Count Two is Mann Act Transportation. This
9 relates to the transportation of Jane between September 15th
10 and October 2015. It's just the same count that was under
11 racketeering act.

12 MS. GEDDES: 9A.

13 THE COURT: 9A. And so, I'm not going to read that
14 again because I read it to you already.

15 I'm going to remind you that what the Government
16 has to prove, though, is that the defendant knowingly
17 transported or caused the transportation of Jane in
18 interstate commerce as the indictment alleges, and that he
19 transported Jane with the intent that he would engage in
20 sexual activity with her in that someone could be charged
21 with a criminal offense for that sexual activity.

22 Count Three is Mann Act Coercion or Enticement and
23 that relates to Jane and is racketeering act.

24 MS. GEDDES: 9B.

25 THE COURT: 9B. (Continued on the next page.)

Charge of the Court

4698

1 (Continuing.)

2 THE COURT: And that is why I am not going to read
3 that charge again, because I read it already.

4 Again, I am just going to remind you what the
5 Government has to prove beyond a reasonable doubt.

6 That the defendant knowingly persuaded and induced,
7 enticed or coerced Jane to travel in interstate commerce, that
8 she traveled in interstate commerce, and that he acted with
9 the intent that the defendant would engage in illegal sexual
10 activity with Jane.

11 Count Four relates to Jane again. This is Mann Act
12 coercion or enticement, and this is in connection with
13 Racketeering Act --

14 MS. GEDDES: 9C.

15 THE COURT: -- 9C.

16 MS. GEDDES: Yes.

17 THE COURT: Again, I have read that to you. I am
18 reminding you again what the Government has to prove beyond a
19 reasonable doubt.

20 That the defendant used a facility of interstate
21 commerce, that he knowingly persuaded or induced or enticed or
22 coerced Jane to engage in sexual activity, that this sexual
23 activity would violate California law, that Jane was less than
24 18 at the time of the acts alleged in the indictment.

25 Count Five is also related to Jane, and it's

Charge of the Court

4699

1 Racketeering Act --

2 MS. GEDDES: 9D.

3 THE COURT: -- 9D. Again, I read that to you
4 already, and I believe I have already told you what the
5 Government has to prove.

6 So, I am not going to repeat that unless either of
7 the parties wants me to do that, and I don't see anybody
8 jumping up and asking me to do that.

9 All right, Count Six relates to Racketeering Act --

10 MS. GEDDES: 12A.

11 THE COURT: -- 12A, and I have already instructed
12 you on that and the language is just the same.

13 Count Seven relates to 14 -- no?

14 MS. GEDDES: 12B.

15 THE COURT: 12B, sorry. That has to do with Faith.
16 Again, I have read that to you. I am not going to do that
17 again.

18 Count Eight also has to do with Faith, that is in
19 connection with 12?

20 MS. GEDDES: 14A.

21 THE COURT: 14A.

22 Okay, again, I think I just read that to you a few
23 minutes ago. I am not going to do that again.

24 Count Nine is also Mann Act coercion or enticement,
25 it has to do with Faith and it's Racketeering Act --

Charge of the Court

4700

1 MS. GEDDES: 14B.

2 THE COURT: -- 14B.

3 I am not going to read it again because I read it
4 just moments ago. And so, that is all of the counts of the
5 indictment. Nine counts to the indictment. The Racketeering
6 and all those related acts, all those Racketeering Acts, and
7 then the Mann Act counts.

8 So, I am coming down to the final part of the
9 instructions.

10 In a few minutes, you are going to begin your
11 deliberations, and so what I want to talk to you about is some
12 general rules about the process of your deliberations. And I
13 just want you to keep in mind that nothing that I have said
14 during the course of the instructions or at any point during
15 the trial is meant to suggest in any way to you what I think
16 your verdict ought to be. That is entirely up to you.

17 Now, in order for your deliberations to proceed in
18 an orderly way, you have to have a foreperson. It is the
19 tradition in this district that Juror Number 1 acts as the
20 foreperson, but if when you begin your deliberation you decide
21 that you want someone else to be the foreperson, you can do
22 that. What the foreperson does is sign all of the
23 communications with the Court and hands them to the deputy
24 marshal during your deliberations.

25 The foreperson's vote does not have any greater

Charge of the Court

4701

1 weight than that of any other juror.

2 So, let's talk about deliberations for a few
3 moments. Your duty is to reach a fair conclusion from the law
4 as I have given it to you and the evidence that was presented
5 in this case. This duty is important. When you are in the
6 jury room, listen to one another, discuss the evidence and the
7 issues of the case amongst yourselves. It is the duty of each
8 one of you as jurors to consult with one another and to
9 deliberate with a view toward reaching a verdict, if you can
10 do that without violating your individual judgment. No one
11 should surrender a conscientious conviction of what the truth
12 is and what the weight and effect of the evidence is. Each
13 juror must decide the case for himself or herself, and not
14 merely give into the conclusion of your fellow jurors.

15 You should examine the issues and the evidence
16 before you with candor and with frankness, and with deference
17 to and respect and regard for the opinions of your fellow
18 jurors.

19 You should never hesitate to re-examine your
20 opinions or reconsider your position from time to time, and to
21 change them if you have become convinced that you are wrong,
22 but don't surrender an honest feeling or belief or conviction
23 about the weight and effect of the evidence just so that you
24 can reach a verdict.

25 To reach a verdict you must be unanimous. That

Charge of the Court

4702

1 means everybody has to agree.

2 It is critically important that you do not
3 communicate with anybody outside of the jury room about your
4 deliberations or about anything related to this case.
5 Obviously, you can't use any electronic device or media like a
6 telephone or a cell phone, anything like that, a smart watch,
7 any kind of communication service. You just cannot
8 communicate with anyone in any way, shape or form about any
9 information having to do with this case or to conduct any
10 research or investigate the case. And that rule, as I said,
11 applies until after I accept your verdict.

12 The only exception to the communication rule is if
13 you have a question for me. And so, if you do have one or it
14 becomes necessary for some reason to communicate with me, what
15 you will do is send a note through the deputy marshal that
16 your foreperson signs. No one in the jury should try to
17 communicate with me except by a signed note, and I will never
18 communicate with any member of the jury on any subject having
19 to do with the merits of the case other than in writing and
20 here in open court.

21 If, during the course of your deliberations, you
22 have questions about the law or if you want some additional
23 explanation, you can send me a note to that effect.

24 You will have all of the exhibits that were admitted
25 at trial, and you will also have access to the transcripts, if

Charge of the Court

4703

1 you want the transcripts of the testimony of any witness.

2 The Government must prove the defendant's guilt
3 beyond a reasonable doubt as we have already discussed. If
4 you find that the Government has met this burden, then your
5 verdict should be guilty. If the Government does not meet its
6 burden, your verdict should be not guilty. To reach a
7 verdict, as I said, you have to be unanimous.

8 I have prepared a verdict form that includes the
9 counts that are listed in the indictment. Beneath each count
10 is a space that's marked "guilty" and another one that is
11 marked "not guilty." The form is not meant to suggest how to
12 deliberate or decide the facts of the case. Your verdict as
13 to each count has to be recorded on the foreperson's verdict
14 form, and the foreperson should use a check mark in the
15 appropriate space, whether it's "guilty" or "not guilty," for
16 each count of the indictment. The foreperson should also put
17 her initials or his initials and the date beside each mark on
18 the verdict form. Again, this has to reflect your unanimous
19 verdict as to each count and each of the questions listed
20 under Count One.

21 So, if you find the defendant guilty of Count One,
22 you also have to answer the fourteen questions that are listed
23 below that count. So, that's on the form.

24 So, I think I said earlier that each juror is
25 entitled to his opinion or her opinion, but you should consult

Charge of the Court

4704

1 with one another and reach an agreement that is based only on
2 the evidence, if you can do that without contradicting your
3 individual judgment. Each of you must decide the case for
4 yourselves after consideration with your fellow jurors. If
5 after carefully considering all of the evidence and the
6 arguments of your fellow jurors, your view is different from
7 your fellow jurors, you should not change your opinion just
8 because you are outnumbered or because it's late. Your final
9 vote must reflect your conviction as to how the issues should
10 be decided.

11 When you have reached a verdict, just send me a note
12 that's signed by your foreperson that says that you have
13 reached a verdict. Do not write down what the verdict is.
14 You should never give a numerical count of where the jury
15 stands in its deliberations in any communication with the
16 Court.

17 The Government and defendant and the Court rely upon
18 each one of you to give this case your full and conscientious
19 attention and consideration. When you do that, you carry out
20 your oaths as jurors and you render a true and just verdict.

21 I am just going to ask you to wait for a few
22 minutes, I want to discuss with the lawyers whether there is
23 anything further that we need to discuss.

24 (Sidebar held outside the hearing of the jury.)

25 (Continued on the following page.)

Sidebar

4705

1 (The following sidebar took place outside the
2 hearing of the jury.)

3 MS. CRUZ MELENDEZ: So, in Racketeering Act One, it
4 says, "A mere offer or promise with the requisite intent is
5 sufficient," and I think you inadvertently put the word "not."
6 Sorry, we tried to get your attention.

7 THE COURT: Is sufficient, okay. Oh, okay.

8 MS. CRUZ MELENDEZ: On page 43, when you were
9 reading the second element, you said "the defendant."

10 THE COURT: Second element?

11 MS. CRUZ MELENDEZ: Yes, so where it says, "The
12 second element that the Government must prove."

13 On page 62, when you were reading the fourth element
14 that the Government must prove beyond a reasonable doubt, you
15 said instead of saying that Jane was less than 18 years old,
16 you inadvertently left out "less than"; you said the
17 Government must prove Jane was 18 years old.

18 THE COURT: What page?

19 MS. CRUZ MELENDEZ: That's 62.

20 THE COURT: Okay.

21 MS. CRUZ MELENDEZ: We need to find a way, something
22 says Jane, when it should have said Faith.

23 THE LAW CLERK: I changed it.

24 MS. CRUZ MELENDEZ: On page 65, when we were
25 discussing Racketeering Act 12, this was the second time where

SAM

OCR

RMR

CRR

RPR

Sidebar

4706

1 you said you must find that the defendant has proven, instead
2 of the Government.

3 THE COURT: Okay.

4 MS. CRUZ MELENDEZ: And yes, the only other change
5 is, we had in 69 --

6 THE COURT: Faith.

7 MS. CRUZ MELENDEZ: -- Faith on page 69, it should
8 refer to Faith.

9 THE COURT: What did I say, Jane?

10 THE LAW CLERK: You said Faith, but I changed it in
11 the document as well.

12 THE COURT: Sorry, Mr. Scholar.

13 MR. SCHOLAR: On page 83, I might have missed it,
14 you read the "as we talked about, each of you is entitled to
15 your opinion"?

16 THE COURT: Yes.

17 MR. SCHOLAR: Okay, then I missed that one.

18 And Exhibits H and I, they are the CDs of Jane, but
19 they are video. And so, if they wanted to hear it, they have
20 to come into the courtroom.

21 THE COURT: I think there is a method, they are in
22 another --

23 MR. SCHOLAR: They can be in another room.

24 THE COURT: Let me just ask Donna.

25 Can I deal with that after I deal with this?

SAM

OCR

RMR

CRR

RPR

Sidebar

4707

1 MR. SCHOLAR: Yes, I just wanted to bring it to your
2 attention.

3 THE COURT: Just give me the page numbers. 34.
4 What else?

5 MS. CRUZ MELENDEZ: 34, 43.

6 THE COURT: Okay.

7 MS. CRUZ MELENDEZ: 62 and 65.

8 THE COURT: Okay, great. All right, let me fix
9 this. But it is written correctly, okay.

10 MR. SCHOLAR: Yes.

11 THE COURT: All right.

12 (Sidebar concluded.)

13

14 (Continued on the following page.)

15

16

17

18

19

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21

22

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24

25

SAM

OCR

RMR

CRR

RPR

Charge of the Court

4708

1 (In open court - jury present.)

2 THE COURT: So, this is just for you. I think I
3 misspoke a few times, shocking, I know, in a couple parts of
4 the instructions.

5 So, when I was talking about Racketeering Act One, I
6 misspoke and I said something was not sufficient and it is
7 actually the opposite. So, we were talking about "a mere
8 offer or promise with requisite intent is sufficient to
9 constitute bribery under Illinois law." I said it wasn't, and
10 I just misspoke. It is written correctly in the instructions.

11 I misspoke again when I was talking about elements
12 that the Government must prove, and this was with respect to
13 another one of the elements, and I said that defendant had to
14 prove beyond a reasonable doubt. It is the Government that
15 has to prove beyond a reasonable doubt. Again, it's written
16 correctly in the charge.

17 Then with respect to Racketeering Act 9C, the fourth
18 element that the Government has to prove beyond a reasonable
19 doubt --

20 Oh, sorry about that.

21 (Pause in the proceedings.)

22 THE COURT: Almost done, sorry about that.

23 What it should read is that the Government must
24 prove beyond a reasonable doubt that Jane was less than 18. I
25 think I said that she was 18. Again, written correctly in the

Charge of the Court

4709

1 instructions.

2 Racketeering Act Twelve, I said the defendant when I
3 should have said the Government. So, what it should read:

4 If you find that the defendant committed either or
5 both of these two crimes, you must find that the Government
6 has proved Racketeering Act Twelve.

7 Was there anything else? I think that was it.

8 All right, so are we good?

9 All right.

10 So, ladies and gentlemen, let's first swear our
11 deputy marshal in.

12 THE COURTROOM DEPUTY: Would the marshal please come
13 forward and raise your right hand.

14 Do you solemnly swear or affirm that you will keep
15 the jurors together in the jury room, that you shall allow no
16 person to speak to them, nor shall you speak to them, without
17 direction of this Court?

18 US MARSHAL: Yes, I do.

19 THE COURTROOM DEPUTY: Thank you.

20 (Deputy marshal sworn.)

21 THE COURT: All right, I am going to instruct our 12
22 regular jurors to go with the deputy marshal and you may begin
23 your deliberation.

24 THE COURTROOM DEPUTY: All rise.

25 THE COURT: Let's ask the alternates to stay here

Proceedings

4710

1 for just a moment.

2 (The jury exits to begin deliberations at 1:40 p.m.)

3 THE COURTROOM DEPUTY: You may be seated.

4 THE COURT: Okay. Our alternate jurors are going to
5 be taken to a separate room.

6 And who is going to take them?

7 THE COURTROOM DEPUTY: I'll take them.

8 THE COURT: You take them. Okay, so I am going to
9 ask you to go with Ms. Greene. All right.

10 And also, folks, I am just going to remind you,
11 don't talk about the case and enjoy your lunch.

12 (The alternate jurors left the courtroom at
13 1:41 p.m.)

14 THE COURT: Okay. I actually have another matter
15 that I have to attend to.

16 I just want to confirm that the exhibits are all in
17 shape to go back to the jurors?

18 MS. GEDDES: I believe they are now. Our paralegals
19 were just finalizing that upstairs.

20 THE COURT: Okay, and that includes the defense
21 exhibits.

22 There was a question about the extent to which the
23 jury is going to be able to play that -- what is it,
24 Mr. Scholar?

25 MR. SCHOLAR: It was H and I. H and I are video

Proceedings

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1 disks, but the audio was admitted. So, I guess if they want
2 to hear it, which I don't think they will, but if they want to
3 hear it, they have to come back into the courtroom, I guess.

4 MS. GEDDES: Okay.

5 THE COURT: Yes, I think I said this before, I am
6 generally of the view that when jurors are deliberating they
7 should be able to look at evidence without having to come back
8 in.

9 Is there a way to just give them the audio?

10 MS. GEDDES: Can you convert it to audio?

11 MR. SCHOLAR: We can try. We can try and do that
12 during the lunch break.

13 THE COURT: All right. And we will send a copy of
14 the charge back. I am sure everybody has got phone numbers
15 and everything so we can contact you if we need to.

16 Anything else that we have to do?

17 MS. GEDDES: I don't believe so, and we'll just
18 coordinate with Ms. Greene to get those exhibits back to them.

19 THE COURT: I am just going to be unavailable for a
20 little bit, but you can reach me if you need it.

21 Okay. Let's take the defendant out.

22 (Defendant exited the courtroom.)

23 (Judge ANN M. DONNELLY exited the courtroom.)

24

25 (Luncheon recess taken - continued on next page.)

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1 (Continuing.)

2 (In open court - jury not present.)

3 THE COURTROOM DEPUTY: All rise.

4 (Judge ANN M. DONNELLY entered the courtroom.)

5 THE COURT: Hi, everybody can sit down.

6 (Defendant entered the courtroom.)

7 THE COURT: All right, my first question is have the
8 exhibits gone back to the jury? Why has that not happened?

9 Are they ready to go?

10 MS. GEDDES: Yes.

11 THE COURT: All right, well, we'll send those back
12 because we have received a note requesting exhibits, and
13 Ms. Greene is giving everybody a copy of the note.

14 (Court's Exhibit 3 was received in evidence.)

15 THE COURT: So, they've requested exhibits, which
16 they'll get; but as you can see on your copy, the floor plan
17 of the Chicago Trax Larrabee studio; the stipulation for Jerie
18 Orteza and Charity Torres. And then 422, which is the letter
19 to Jane's brother. They also want the full Sonja transcript.

20 And so, I think what we'll first do is just get them
21 back all of those exhibits.

22 The other thing I should say is that the, now I
23 can't remember which is which, the Court's instructions and
24 the verdict sheet went back. The Court's instructions are
25 Court Exhibit Number 1 and the verdict sheet is Court Exhibit

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1 Number 2.

2 (Court's Exhibits 1 and 2 were received in
3 evidence.)

4 THE COURT: And so, I guess with respect to the
5 Sonja transcript, we just have to take out all the objections
6 and extraneous things.

7 MS. CRUZ MELENDEZ: We've started the process.

8 THE COURT: Okay, great.

9 What are you going to do then, just copy it with
10 redacted portions?

11 All right.

12 Has the defense undertaken, I mean are you looking
13 at it, too?

14 MR. CANNICK: No, we just saw the note, so we're
15 just starting it now.

16 THE COURT: Okay.

17 MS. SHIHATA: I think we have a version of the
18 transcript with proposed redactions. So, we'll print that
19 out. We can give that or e-mail it to defense counsel, they
20 can take a look.

21 THE COURT: That was fast.

22 MS. SHIHATA: We've been doing it for everybody
23 prior to getting any notes.

24 THE COURT: All right.

25 Okay, so, if you've got that ready to go.

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1 MS. SHIHATA: Do you want it by printing or e-mail?

2 MR. SCHOLAR: You can send it by e-mail, that's
3 fine.

4 THE COURT: And then all you have to review it for
5 is to make sure, just to double check really, and then we can
6 send it back.

7 But why don't we right now take the exhibits back to
8 the jurors.

9 MS. GEDDES: Yes. Did you guys look through the
10 exhibit list?

11 THE COURT: This should have been done. You haven't
12 looked through the exhibit list?

13 The jury has been deliberating for two hours, let's
14 get this back here.

15 Is there some dispute?

16 Okay, I am not hearing anything, so let's take this
17 back.

18 Is there a problem?

19 MR. SCHOLAR: No, there's no problem.

20 THE COURT: No problem, okay.

21 (Pause.)

22 THE COURT: All right, I am assuming there is not
23 going to be any problem here. I assume you can call me if you
24 need me, but once you've finished it, give it to Ms. Greene
25 and she'll send it back.

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1 MR. CANNICK: Your Honor, at the end of the day, do
2 you have a cut-off time or....

3 THE COURT: Well, probably 5:30.

4 MR. CANNICK: Okay.

5 THE COURT: Yes, I mean I want to stay just as much
6 as you do.

7 MR. CANNICK: Yes, right.

8 THE COURT: Okay, thanks everybody.

9 MR. CANNICK: And you want us back here, in the
10 event we don't get another note, by 5:30?

11 THE COURT: Yes, you are close by, I'm assuming?

12 MR. CANNICK: Yes. I'm not going to go back to
13 Westchester.

14 THE COURT: All right.

15 (Judge ANN M. DONNELLY exited the courtroom.)

16 (Defendant exited the courtroom.)

17 (Recess taken.)

18 (In open court - jury not present.)

19 THE COURTROOM DEPUTY: All rise.

20 (Judge ANN M. DONNELLY entered the courtroom.)

21 THE COURT: Hi, everybody can have a seat.

22 Could I just see the parties at the time for a
23 second off the record?

24 (Sidebar held with the Court and counsel only.)

25 THE COURT: Okay, we have a note from the jury. It

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1 says:

2 From foreman juror to judge, subject, re verdict.

3 We the jurors have not reached a verdict as yet.

4 I think this means they want to go home.

5 It's signed by Juror Number 1, the foreperson. This
6 is going to be Court Exhibit Number 4.

7 (Court's Exhibit 4 was received in evidence.)

8 THE COURT: So, I am going to bring in the jurors
9 and excuse them for the weekend.

10 (Pause.)

11 THE COURTROOM DEPUTY: All rise.

12 (The jury enters the courtroom at 5:33 p.m..)

13 THE COURTROOM DEPUTY: You may be seated.

14 THE COURT: Okay, jurors, good afternoon.

15 THE JURORS: (Collectively) Good afternoon.

16 THE COURT: I've received your two notes. The first
17 note was requesting some evidence and some testimony, and I am
18 told you got that.

19 The most recent note says: We, the jurors, have not
20 yet reached a verdict as yet.

21 And so, I take that to mean that you'd like to go
22 home. So, I am going to excuse you for the weekend.

23 All those conditions that I have expressed to you
24 over and over again continue to apply. Please do not talk
25 about the case at all to anyone. Do not read any news

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1 accounts of the case at all. And don't talk to one another
2 about the case. You can only deliberate when all twelve of
3 you together are alone in the room with no one there. Do not
4 continue your conversations about the case with your fellow
5 jurors outside of that jury room.

6 So, I hope you have a restful and wonderful weekend.
7 We will resume your deliberations, again, on Monday morning.

8 Thank you so much.

9 THE COURTROOM DEPUTY: All rise.

10 (The jury was excused for the weekend at 5:35 p.m.)

11 THE COURTROOM DEPUTY: You may be seated.

12 THE COURT: We also just have to bring the
13 alternates in.

14 THE COURTROOM DEPUTY: All rise.

15 (The alternate jurors entered the courtroom at 5:36
16 p.m.)

17 THE COURTROOM DEPUTY: You may be seated. Just sit
18 where you want.

19 THE COURT: All right, Alternate Jurors, the jury
20 has finished its deliberations for the day. I just want to
21 tell you how much I appreciate your continued attention and
22 patience, but all of those conditions that I placed on you are
23 still in place.

24 So, over the weekend don't look anything up about
25 the case, don't talk about the case. Obviously, don't talk to

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1 the deliberating jury about the case, and don't listen to any
2 news reports or look anything up on the internet or anything
3 like that. But I do want you to have a nice restful weekend,
4 and so I will see you on Monday morning, 9:30.

5 Thanks so much.

6 THE COURTROOM DEPUTY: All rise.

7 (The alternate jurors were excused for the weekend
8 at 5:37 p.m.)

9 THE COURT: All right, everybody can have a seat.
10 Anything before we break for the weekend?

11 MR. SCHOLAR: Your Honor, do you want us to come
12 back here at 9:30 on Monday or just be in the area?

13 THE COURT: I think it's enough that you are just
14 close by. I mean there is no reason. I am sure you will miss
15 it, but there is no reason to come here unless there is some
16 kind of communication, just as long as we have a way to reach
17 everybody. Okay?

18 MR. SCHOLAR: Thank you.

19 THE COURT: All right, thanks so much.

20 (Defendant exited the courtroom.)

21 THE COURT: Thank you to the marshals, also.

22 (Judge ANN M. DONNELLY exited the courtroom.)

23

24 (Proceedings adjourned to Monday, September 27, 2021
25 at 9:30 a.m.)

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I N D E XPAGEREBUTTAL SUMMATION - MS. SHIHATA:4571CHARGE OF THE COURT4599E X H I B I T S

Court's Exhibit 3

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Court's Exhibits 1 and 2

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Court's Exhibit 4

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